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Brief of Atty. Gen. for U. S.

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# In the Supreme Court of the United States.

OCTOBER TERM, 1899.

THE STEAMSHIP ADELA, HER ENGINES, boilers, tackle, apparel, etc.; The Atlas Steamship Company (Limited), claimant, appellant,

v.

THE UNITED STATES.

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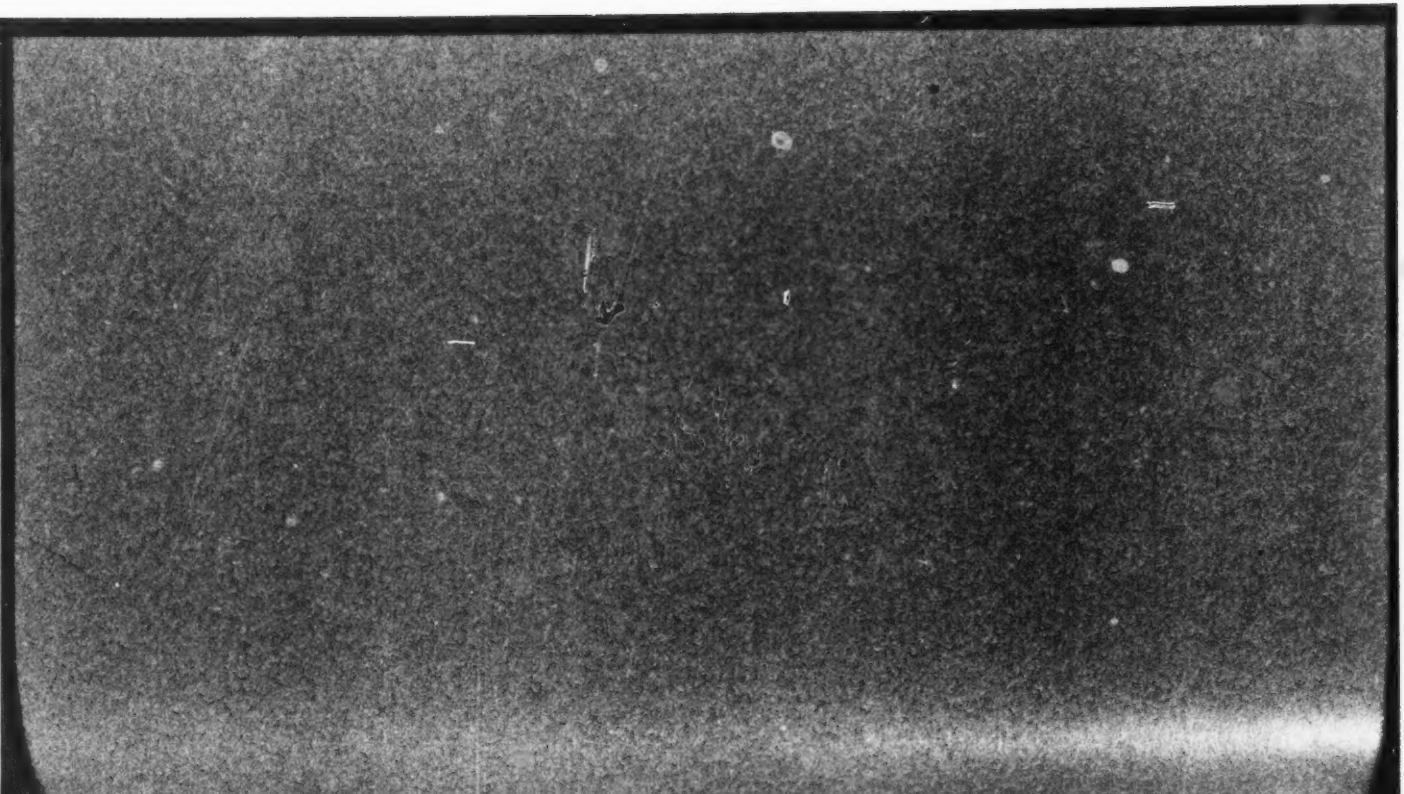
APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

## BRIEF FOR THE UNITED STATES.



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## BRIEF FOR THE UNITED STATES.

### STATEMENT.

The *Adula*, a British steamship, but under charter to a loyal Spanish subject, was seized on June 29, 1898, by the United States cruiser *Marblehead* for attempting to run the blockade established at Guantanamo Bay, Cuba. The vessel, when within half a mile of the entrance to the bay, was hailed by the *Vixen*, brought to, and directed into the harbor where the *Marblehead* and other war

vessels were lying, and shortly thereafter she was seized by order of the commander of the *Marblehead* and sent into the port of Savannah for adjudication. The libel, the claim on behalf of owners, and the answer of the owners to the libel were duly filed, and the depositions *in preparatorio* of the purser, the acting master, the charterer, the chief officer, two petty officers, and a sailor (pp. 88, 94, 103, 122, 129, 136, 116) taken before the prize commissioners from the 20th to the 22d of July, 1898. Upon this evidence, and upon the ship's papers and other evidence of a documentary character found on the ship by the captors, the vessel was condemned by the court on July 28 (p. 24). On the 25th of July the depositions *de bene esse* of Lieutenant Anderson, the prize master, and two of the crew of the *Marblehead* were also taken before the prize commissioners (pp. 143, 176, 180). Upon July 28 the claimant filed a motion to take further proof (p. 19), and supported it by an affidavit on behalf of the owners to which a certain statement and other documents were attached (pp. 25, 30 *et seq.*), which motion was duly answered by the United States (p. 40), with a tender of the depositions *de bene esse* by way of counter-showing (p. 48), and thereupon the court denied the motion by order filed August 15 (p. 49), and by opinion dated August 13 and filed August 18 (pp. 57–68) reaffirmed the decree of condemnation and the denial of the motion to admit additional testimony. The claimants thereupon took this appeal assigning 37 specifications of error (p. 238 *et seq.*).

Various orders of court having been made for the delivery of the vessel to the claimants upon stipulation

for value or for sale thereof, the former upon the claimants' petition (pp. 8, 21, 50—it appearing at p. 50 that the claimants formally declined to give a stipulation at the appraised value—and p. 242, by which it appears that the endeavor to sell at Savannah and at New York upon removal there in accordance with the statute was unsuccessful), the vessel was finally delivered to the claimants upon a stipulation for value in the sum of $50,000 (p. 247).

The court is respectfully informed, from sources *dehors* the record, that while the *Adula* was at New York awaiting the unsuccessful sale, in the custody of the marshal for the southern district of Georgia in the prize case, and after the decree of condemnation was entered, she caught fire and was salved by certain tugs, on behalf of the owners and crews of which an intervention was filed in the United States district court for the southern district of Georgia. Subsequently to the fire, the vessel was released to her owners upon the stipulation for value just referred to. Subsequent to the release, the United States, the claimants in prize, and the salvors stipulated that the stipulation for value in the prize case should stand as security for any claim which might be filed against the vessel up to the amount of the stipulation.

It is also the fact that the vessel itself recently foundered off the Jamaican coast.

The 37 assignments of error may be reduced to the following four propositions:

I. The *Adula* was not a Spanish ship for the purposes of this voyage, and her owners are not to be charged with any illegal intent or attempt on the charterer's part

which may appear. (Specifications II, III, IV, IX, X, XII, XIII, XVI, XVIII, XX, XXVII, XXVIII, XXIX, XXXI, XXXII, XXXIII, XXXV.)

II. The charterer was not engaged in running the blockade at Guantanamo or other ports on the south coast of Cuba, but in a meritorious undertaking to bring off refugees, which not only was not illegal, but was approved by the policy of the United States. There was no blockade of Guantanamo and the other Cuban ports in question, or at least none regularly established and effectively maintained or duly notified, and the claimants had no knowledge thereof. (Specifications V, VI, VII, VIII, XI, XVII, XVIII, XIX, XX, XXVII, XXVIII, XXIX, XXX, XXXII, XXXIII, XXXIV, XXXV.)

III. Further proof should have been allowed. (Specifications XXIII, XXIV, XXV, XXVI.)

IV. Certain evidence should not have been considered. (Specifications I, XIV, XV.)

It will be noticed that some of the specifications are embraced in both the first and second propositions. On the claimants' theory this was a marine trespass, and therefore in asking for a reversal of the decree below with costs they allege lack of probable cause of capture and request award of damages against the captors. (Specification XXVIII, p. 240; claimants' answer, pp. 14–18; petition for appeal, pp. 243–4.)

The Government and captors have to maintain the negative of these propositions, and the argument will therefore follow them in that form.

## ARGUMENT.

I. *The Adula on this voyage was in effect a Spanish ship, and at all events is liable to condemnation as such by intendment of law.*

Before reviewing the facts and the law upon this proposition, it is to be said that the argument in the case might be addressed, perhaps more briefly, to the Government's position stated upon three propositions, as follows:

1. There was a blockade at Guantanamo, and the claimants and charterer knew of it.

2. They attempted to violate the blockade; at least, they approached near enough to see if it could be eluded, professing an intention merely to make inquiries, which—

3. Under many decided cases can not be permitted, and amounts to a violation of the blockade.

But the propositions already formulated bring out more strikingly the assignments of error, will cover the three statements made, and therefore will be followed. Taking up, then, the first proposition:

### A. *As to the facts.*

The charter (pp. 38, 187) was to José R. Solis, a loyal Spanish subject, born near Havana and living with his family near Manzanillo. He had a personal passport to this effect, issued by the secretary of the province or municipality at Manzanillo in April, 1897 (answer to first interrogatory, pp. 103–4; p. 220). He was French consul. The authorities (presumably) wished him to be mayor of his town. He gave up business trips into the interior for fear he would be suspected of

being an insurgent. As to the reverse character, "Nobody can prove anything" on him (answer to twenty-second interrogatory, p. 109). After his brothers had gone to Havana, they "may have gone into the [Spanish] volunteer service" (p. 115). Solis says, on page 115, that a gentleman at Manzanillo suspected an American of keeping up correspondence with the *enemy*, which would oblige him to go to prison or to the insurgents, and that he, Solis, went to see the gentleman and held himself responsible for the American citizen. He was entered on the ship's articles as supercargo; he had, therefore, been enrolled in her crew (Solis, answer to ninth interrogatory, p. 105; purser, p. 92; master, p. 100; *et passim* in testimony of others of crew, p. 190; also *Adula* log, p. 209). The charter put the vessel at the disposal of the charterer for conveyance of passengers from Manzanillo, Santiago, and Guantanamo to Kingston, and gave an option to the charterer for another similar voyage upon similar terms upon twenty-four hours' notice after arrival at Kingston. The captain says (p. 97): "As I understood it, as well as I can remember, we were to go to any other ports that the charterer designated and was not put down in the letter of instructions, if he wished to go there;" although Solis himself says (p. 112) that he had no right to direct the navigation of the ship. Solis expected to make $19,000 net profit. He had made the same sort of trip twice before with English schooners (p. 110). He did not see that there was anything wrong in bringing refugees away from the track of war; he was doing it upon business principles; at the same time, there was a kind of humanity in it. He does

not mean to say that he did it only from humanity; it was business (p. 109). Solis knows nothing about the *Adula's* previous voyages (p. 113); he had seen her first about two months before on the north coast of Jamaica, when he was going from Manzanillo in an English schooner (p. 105). The translated copies of telegrams (pp. 220–1) show what he was doing with other vessels during those two months.

The British shipping master at Kingston sanctioned the terms of the *Adula's* engagement (p. 189), and by her log (p. 198) and clearance (p. 237) the voyage appears as to Guantanamo alone and not to Manzanillo, Santiago, and Guantanamo, although the British bill of health (p. 219) mentions the three ports. She sailed without cargo, but with an excessive supply of coal for the voyage alleged, but this did not appear from the testimony *in preparatorio,* Solis stating that the owner had ordered sufficient coal for 850 miles run, and one of the sailors (p. 117) that the only load was coal and he does not know whether it was to be sold or not (see also p. 138). The vessel bore a passport from the Spanish consul at Kingston. The purser and captain say the bill of health was viséed by the Spanish consul (pp. 89, 96, 100). Solis says (pp. 106, 111, 112), having been told the owners had decided to charter the vessel if he got the Spanish consul's permission to enter the ports, that the Spanish consul demurred unless he would take cargo, but finally granted him a passport for that trip. The witnesses assert that all papers were delivered up to the captors and that there was no spoliation. Nevertheless, this passport was not among the papers turned over to the

prize commissioners (pp. 82–7). The vessel, however, did carry, by Solis, the supercargo, the letters listed at pages 213–14, which appear to have related to commercial and domestic matters, and, among other letters (pp. 222–230) addressed to persons at Santiago and elsewhere (see No. 13, p. 213; No. 32, p. 214; No. 33, p. 222), one which states (No. 34, p. 223) that the writer is "told with great secrecy that Mr. Solis, of Manzanillo, with the steamer *Adula* (English), is going to run the blockade to carry provisions or take out passengers." The writer requests a cable (p. 224) in order to know if the letter has been received, inasmuch as the bearer may not be able to enter. Solis states that he asked the consul of the United States at Kingston for permission to make his trip, and that the permission was refused (pp. 109, 114): "Mr. Dent told me not to go. I don't remember his giving any particular reason for not going. * * * He told me not to go, and I answered to him that I was not going for anything wrong. He said to me he could not give me permission; then I said to him I decided to go, and I don't think there will be any harm for me since I didn't go for any bad thing, but only to bring refugees. * * * I don't remember Mr. Dent telling me the vessel would be liable to capture. He said I ought not to go and that he could not give me such permission. * * * Captain Forwood told me he never thought it necessary to get permission of the consul, since it was not a business matter such as bringing a cargo or wrong things. * * * If I had known he was not going to give me such permission, I should not have lost my time in going, and since Captain Forwood, of the Atlas Line,

told me he did not consider there was any danger in going for refugees." It seems that Mr. Forwood was fully informed by Mr. Solis of the consul's refusal to give permission, and disregarded it (p. 106). The necessity which the owners recognized of having authority from Washington in order legally to pass the blockade is shown by the letter of Mr. Forwood to Captain Yeats, dated May 21, 1898, in reference to one of the voyages to Cienfuegos, for the writer says (p. 233): "In giving this letter to the blockade, be sure and ask the officer if he would allow the ship to pass another voyage without cabling to Washington."

When the combined effect of the testimony *in preparatorio* disclosed the grave and immediate peril to the vessel by reason of her character and dealings, the claimants filed an affidavit by their resident agent in the city of New York, and attached to it a statement of Mr. Forwood with certain papers appended, by which they brought forward the alleged relief and protective purpose of the voyage to noncombatants in Cuba, the innocent purpose of the Spanish passport as connected with said object, and sought to show that the former voyages of the *Adula* to Cienfuegos and Santiago, which are shown by the testimony *in preparatorio* at pages 91, 96, 102, 113, 118, 121, 124, 128, 132, 136, 138–139, 140, 142, and on one of which packages of provisions were landed at Cienfuegos, were made with permission of the United States authorities, or (on the one when the provisions were landed) when it was supposed that the blockade had been abandoned; that the expectation of the owners was that the journeying to the three ports would be done

under the supervision and control of the United States Navy; that the charterer was a friend of the United States and of the Cuban insurgents; that the owners had no knowledge or suspicion that the charterer would carry letters, and that the charterer did so at the last moment only in answer to the importunities of persons who desired to communicate with friends. Similarly, the claimants denied knowledge of Solis's contraband trade, and that Solis was ever in fact engaged in trade with blockaded ports (pp. 25, 40).

The answer of the United States to these *ex parte* statements (pp. 40–49) very completely answered the claimants' contentions or proposals, especially in reference to the portion of the case which we are now considering, in paragraphs 6*a*, 6*b* (the previous record of the vessel on similar trips to Cienfuegos and elsewhere, as strengthening the validity of the condemnation, will be rather considered in the portion of the argument devoted to the southern Cuban blockade as proclaimed and as established *de facto*), in 6*h*, 6*k*, 7*g*, 8.

We have refrained thus far from embracing in the statement any matter taken from the depositions *de bene esse*. They were duly taken in accordance with the statute, and were properly used in the case upon the claimants' motion to take further proofs, and as a counter showing to their own *ex parte* affidavit and statement, under the tender by the United States, on page 48. The argument to show that they were properly considered in the case in view of the facts and authorities will be reserved for a later portion of the brief. Sufficient has been said to make apparent now the light which the

depositions *de bene esse* shed upon the questions at present under consideration.

Lieutenant Anderson, the prize master, testifies, at page 152, as to statements of Solis to him confirming Solis's own testimony *in preparatorio* of the business object of his trip and the refusal of the American consul to give him the desired permission to make it. As to the cargo of coal, he testifies that the vessel carried 96 tons, enough to carry her 1,200 miles, whereas her ostensible voyage was 550 miles; with all allowances, she had coal for four and one-third days' steaming over her ostensible trip, or considerably more than twice as much as necessary. She had 17½ tons left after steaming the nine hundred odd miles to Savannah, and the situation was not consistent with an intention to make her regular coasting trip around Jamaica after this trip, because part of the coal was in the lower hold cargo space, and for the island trip would have to be transferred to the bunkers and the cargo space cleaned up (pp. 154, 155, 170, 171).

Now, Mr. Forwood, one of the owners, or the owner's agent at Kingston, sufficiently knew all about Mr. Solis; that he was a Spaniard trading from the Spanish port Manzanillo; that he was loyal to Spain and in harmonious relations with the Spanish consul, and that he had been shipping supplies to Cuban (that is, Spanish) ports, as appears from Forwood's own statement, from the New York agent's affidavit referring to him (by which in paragraph J, p. 29, the claimants justify Solis's previous trading), and by the facts given by Solis himself as to his dealings with Forwood (p. 106). Furthermore, the Kingston *Gleaner*, of June 25 (p. 218), informed Mr.

Forwood (if he did not know before) of the report that the *Adula*, on her last arrival from Cienfuegos that week, had brought an agent of the Captain-General of Cuba to arrange to make Jamaica a Spanish provision base, and the *Adula's* previous operations combined to show Mr. Forwood what such business was, and the telegrams to Solis on pages 220 *et seq.*, indicate that Solis was a good deal about the principal hotel at Kingston, and was much engaged in trade and shipping interests, which were Mr. Forwood's business.

B. *As to the law.*

On the foregoing facts it must be quite clear that in the eyes of the law this vessel had been so far clothed with Spanish character as to become enemy property with respect to the liability to condemnation; or that her owners had so fully acquiesced in the purposes of the undertaking as to subject them to the penalty as such upon well-determined rulings of prize law. Further, knowledge and participation in the objects and incidents of the voyage as an illegal mission (to put it leniently), such as the claimants' substantial approval of the charterer's cablegram to Santiago (p. 187), will be shown on the later branches of the case when the acts of the vessel on this and previous voyages, her course to Santiago and Guantanamo, the facts as to the blockade, and the circumstances of the seizure are considered. The claimants seek to have it appear that all matters and transactions bearing a doubtful look become innocent when viewed in the light of the alleged humanitarian purpose of the voyage, and become legal when the policy of the United

States with regard to refugees is considered. But the purpose of the voyage is professedly commercial and the humanitarian object merely an asserted incident. The United States, as a matter of fact, had not recognized Cuban belligerency largely because the Cuban ports were held by Spaniards and not by the insurgents; and while the policy of the United States did not forbid, in certain instances, the withdrawal of refugees upon definite permission given, especially their own citizens and neutrals, there was no policy to allow, as a usage and without specific permission, the transportation of refugees from Cuba; in fact, the natural hesitation of the United States authorities to permit the withdrawal of refugees in the much stronger case of imminent bombardment of Santiago was one of the striking features of that campaign, and is proof that the claimants can not rely upon this shadowy justification. In reality the *Adula* was seeking to maintain traffic and correspondence both with the enemy and with us, and alleges a right to immunity something like that possessed by a cartel ship. A cartel or license, which suspends the hostile character, protects even an enemy's ship, but without it a neutral vessel actually in the enemy's service or upon the enemy's errand should not be shielded behind the alleged beneficent purpose any more than an enemy vessel.

Prize law forbids a citizen's trading with the enemy; much more does it forbid an enemy's trading with the enemy on his own instance or under neutral cover. This reason is to be added to the other grounds for the condemnation of enemy or neutral property under such circumstances. The case here is just that case — covert

trading with the enemy by an enemy and a neutral, under an enemy license—the Spanish passport.

Of course the fundamental principle of prize law, that all trade with the enemy is prohibited to all persons, whether natives, naturalized citizens, or foreigners, under the penalty of confiscation, refers more especially to those who are domiciled in the national territory, and this case finds sufficient ground for condemnation on the broad principle of breach of blockade by the neutral or by an enemy with the neutral owner's concurrence. And again, the trade with the enemy ordinarily contemplated refers to the conveyance of cargoes. Nevertheless, communication is commerce, and the conveyance of intelligence, which is one of the striking elements in this case and lies apart from the contention that the coal, or at least the surplus thereof, was cargo, is an offense of very high grade and is as much subject to the prohibitions of prize law as the transportation of contraband or the breach of blockade; and is as much forbidden to an enemy or a neutral (whatever the *locus* of the operations) as to a citizen. Sir William Scott says in *The Vrouw Judith* (1 Rob., 150):

> A blockade is a sort of circumvallation round a place *by which all foreign connection and correspondence is, as far as human force can affect it, to be entirely cut off.* It is intended to suspend the entire commerce of that place. * * *

Justice Washington, in the case of *The Tulip* (3 Washington Circuit Reports, 181), says:

> The same principle of the maritime law which makes that species of trading, which consists in the

> mere intercourse of buying and selling, an offense, *with stronger reasons* for the public safety must condemn the act of conveying intelligence to the enemy. * * * In neither case does the condemnation proceed on the ground of the party being actually an enemy nor of the property being actually owned by an enemy, but in both cases the party acts as if he were an enemy, and therefore the maritime law treats the property as if it belonged to an enemy.

In the *Bermuda* (3 Wall., pp. 514, 557) the decision was that enemy commerce under neutral disguises has no claim to neutral immunity; that while neutrals are conveying to unblockaded belligerent ports even contraband of war, the seizure is restricted to the actual contraband and does not extend to the ship or other cargo, except in cases of fraud or bad faith on the part of the owners or of the master with the sanction of the owners, and the *Bermuda* was forfeited because of the owner's fraud and bad faith found in the case, which made him responsible for unneutral participation in the war.

The doctrine of the responsibility of the principal for his agent's acts or course of proceeding is fully applicable to the case. The usual form of that doctrine in prize law fixes the responsibility of the owner for the master's acts, always so far as the vessel is concerned, although certain exemptions are found for a cargo owner who does not authorize or ratify the master's conduct. If the owner has sustained any injury by fraudulent or unauthorized acts of his agent, he is entitled to his remedy over against the agent. (Story's Principles and Practice of Prize Courts, pp. 71, 72.) The reason of these rules properly includes

the case of the charterer here, whose dealings and intentions were fully known to the owners, which view is strengthened by the fact that he was supercargo on their own crew list, and thereby received an authoritative and representative character with definite functions attached.

Now, even if the owners had not anticipated the violation of the public law, "it is a settled principle that * * * the fate of their vessel with respect to an infraction of that law must depend upon the conduct of the agent with whom they have intrusted its management." (*Jecker* v. *Montgomery*, 18 How., 119; *The Bermuda*, 3 Wall., 556.) Here, too, while there was no spoliation of unusual aggravation, the disappearance of the Spanish consular certificate is sufficient to lead to the most unfavorable inferences as to employment and destination, if not as to ownership. (*The Bermuda*, id., 550.)

There can be no doubt of Solis's character as an enemy on his own admissions, even taking his character as a neutral French vice-consul. The rule is that such an official, resident and trading in a belligerent country, is as to his mercantile character deemed a belligerent of that country. (*The Indian Chief*, 3 Rob., 22; *The Josephine*, 4 Rob., 25.)

Consequently, as we contend, there can be no fair doubt of the knowledge and adoption by the claimants of Solis's enemy character for the purpose of this voyage.

Now, the conclusions of prize law respecting the national character of property, which may be applied here with respect to the temporary national character or assimilation to enemy character of this vessel, depend some-

times upon the habits and trade of the ship or upon the nature of the voyage and cargo, or upon the legal or illegal conduct of the parties themselves. Very often, where there is neutral breach of blockade, or such fraudulent carrying of contraband as taints the vessel too, the domicile of the proprietor enters into the question, though not, of course, in the present case. Taken by all the tests suggested, this vessel is to be condemned both because of her habits and trade, because of the nature of this voyage, and upon the illegal conduct of the parties. In all such cases where the property is condemned it appears to be by a fiction, or rather by intendment of law, deemed the property of enemies—that is, of persons who are so to be considered in the particular transaction. (Story's Prin. and Prac., etc., pp. 58, 59, and auth. cit.)

In most of these cases the transfer to the enemy's service was so fully accomplished or the enemy character was so predominant as to justify the condemnation of the vessels *eo nomine;* but in the *St. Lawrence* (1 Gall., 467; Fed. Cas., 12232) this was not the case; nevertheless the vessel was condemned as enemy vessel *sub modo* upon circumstances similar in principle with those here involved. This was a case of an American ship which had, however, during the war of 1812, sailed under a British license from Liverpool and was ultimately claimed by an American firm, one of the members of which was a native of Scotland, but a naturalized citizen of the United States, although he had been resident in England. There was also an obstinate suppression of papers, and because of these circumstances the court was of opinion that it

might have placed upon the vessel and cargo "the imputation of an hostile character," although it was finally disposed of upon other grounds. It is cited here to show that even where a vessel may not be condemned *eo nomine* as enemy property, it may bear an enemy character and be subject to the imputation thereof and liable to condemnation on that ground.

The authority for contending that the *onus probandi* of neutral interests rests on the claimant may be appropriately considered here. It is a general rule of the prize court that the *onus probandi* that the property is neutral rests upon the claimant, and if he fails to show it, condemnation ensues. "The burden of the neutrality of the property rests on the claimants." (*The Walsingham Packet*, 2 Rob., 77; *The Rosalie and Betty*, id., 343; *The Countess of Lauderdale*, 4 Rob., 283; Story's Prin. and Prac., etc., pp. 26, 45, 53.)

While ships are deemed to belong to the country under whose flag and pass they navigate, and it is said that the flag and pass are conclusive of the character of the ship, the party who stands upon the character so shown is necessarily bound by all the circumstances affecting it. Even where the flag and pass are not ambiguous the claimant is not at liberty when they happen to tend to his disadvantage to turn round and deny the character which he has worn for his own benefit. (Story, pp. 61, 62, and auth. cit.) Much more when the national character is varied or affected by a belligerent document not consistent with neutrality should the neutral owner be responsible for the penal consequences which properly

attach to an enemy character or to a quasi enemy character which is forbidden to a neutral. Sailing under the enemy's license is deemed *per se* a sufficient cause of condemnation. The Spanish passport was an enemy license or pass.

II.

*The vessel was engaged, under the charter, in running a blockade duly established and effectively maintained.*

A. *As to the facts.*

The testimony *in preparatorio* as to the course of the vessel is that she was directed at all times when the weather would permit to the port of her destination, but it was considerably out of the course to the westward on account of the winds and currents (p. 92). They steered to the westward of the direct course, as can be seen by the log book, on account of not being acquainted with the coast line to the east of Santiago. They were sailing a little wide of the port and may have been a couple of points off the course to the westward. As they approached the coast not far from the fleet at Santiago, they imagined they would be stopped, and slowed down and steered about a quarter of a mile in the direction of Santiago, and then turned around and steered direct for Guantanamo (p. 101). It is evident from the final sentence of the captain's answer to the thirty-sixth interrogatory that in the preceding sentences he means to say that he first changed his course farther to the west and then veered around to the eastward. When they sighted the war

ships at Santiago they "were coming up past there and * * * saw them about 4 or 5 miles away and * * * passed right on by them" (p. 120). The chief officer says (p. 127) that they left Morant Point steering a direct course to Guantanamo, and steered that course until they found about noon on the next day, June 29, that they were near Santiago and much farther to the westward than they expected, for which the only reason they can give is currents, wind, or bad steering. They then altered the course, apparently still farther to the west or to the northward, in order to get their bearings and steer a direct course along the coast. When they saw the American men-of-war they headed for them for a short distance and then sheered off to the eastward. They were 10 or 15 miles wide of their course (pp. 127, 128) and about 5 or 6 miles from the fleet at Santiago. One of the quartermasters says (p. 135), "We went right straight from Jamaica to Guantanamo," and immediately adds, "We went by Santiago before we came to Guantanamo."

The true story of the voyage is not to be learned from the log (pp. 198, 199), which is shown to be filled with inconsistencies, as illustrated by the charts in evidence (a reproduction of one of which is given in the brief for the naval captors), and by the analysis of the log entries, and of the positions by observation and dead reckoning, respectively, given in Lieutenant Anderson's deposition on pages 156–8.

The *Adula* left Jamaica about 6 p. m. July 28, and set successive courses in passing along the Jamaican shore from E. S. E. to E. N. E., until at 11.15 p. m. Morant

Point light (the eastern headland of Jamaica) bore to the N. of N. W., when they set their course N. N. E. About midnight, or not long after, it would seem, they skirted the western edge of the dangerous Fromigas Bank (as to the danger, see Anderson's testimony, p. 159), although it might be suggested that the proper course to Guantanamo would have taken them clear of the eastern edge. Lieutenant Anderson, however, on page 159, only thinks that a prudent navigator would not have put his course on a bank like that, and in cross-examination (p. 171) believes that it would have been natural, under a northeastern breeze, to have borne a little to the westward of the bank. At 2 a. m. they were still holding a N. N. E. course, hauling around more to the north at 7.30 a. m. At 9 a. m. they sighted the Cuban coast. At noon their latitude by observation and dead reckoning is entered on the log as identical. But the dead-reckoning latitude, figured out by the courses on the run from 11.15 the night before, is 16 miles south of the observed latitude, and working out the log entries puts the *Adula* at noon at the point C, some 6 miles east of the point D, where the dead reckoning, that is, the course steered, and the run places her, *according to the log entry of longitude*, i. e., according to the captain's statement; that is, she actually appears to have been at the more westerly point and so much nearer Santiago. This difference is admitted in the affidavit on behalf of the claimants (p. 27). To bring her out at D, instead of at C, where Lieutenant Anderson says computation on the entries places her, the master may have allowed for an easterly wind, but the log does not show this. The striking fact

is, as shown from claimant's own testimony cited below, that the vessel was many miles farther west and nearer Santiago than any positions to be deduced from the log. At 1 p. m. he shifted his course to north by west when about 8 miles from the coast. At 2 p. m., when 5 miles off, the *Adula* saw several war vessels off Santiago bear N. W. by W., and then she steered coastwise for her port.

Solis's statement is that the war vessels in the neighborhood of Santiago were 10 or 12 miles off when they were sighted (p. 113), and these vessels may possibly have been farther than 5 miles to the east of the Santiago Morro. But two of the *Adula's* own officers testified that the distance from the war ships was about 5 or 6 miles (pp. 128, 131), and the records of the Navy Department show that in the Santiago blockade and investment the war vessels seldom ran farther than 3 or 4 miles from Morro, although within the range of the Morro guns, which carried 6 or 7 miles. (See *post*. p. 31.)

It will be observed that even if her course to D at noon on the 29th be accepted as consistent with good faith, she then should have held off on a NE. by N. course for Guantanamo (for the desire to get bearings by sighting the coast line had been gratified for at least three hours), and instead of that she continued for another hour on the more northerly course, and then edged around still more to the westward before steering away to the east from the fleet at Santiago. Just before this eastern deflection the captain says he held to the westward, and the Government's position is that he held too long and much too far to the westward (p. 172). The log then says that

at 4 p. m. they were off Guantanamo harbor, hailed by an American war ship [the *Vixen*], and were told to proceed. At 5.30 they were boarded by the *Marblehead's* officer with a pilot and conducted inside to their anchorage.

It will be noticed that there is further inconsistency in the run to be deduced from these log entries, for the distance from the point where the war ships were observed to Guantanamo appears to have been 30 miles, and the vessel to have covered it in the two hours, from 2 o'clock to 4. This does not conduce to reliance on the entire consistency of the log or the uniform and exact veracity of the officers. It seems that the vessel had gotten the wrong entry in her log on a previous occasion (p. 168).

The occurrences at the time of seizure are tolerably clear from the accounts of the captain (pp. 98, 99, 103), Solis (pp. 104, 107), Morris (p. 119), Clarkson (pp. 125–127), Hamilton (pp. 130–132, 134), Darling (p. 142), of Lieutenant Anderson (pp. 144–148), and of the men-of-warsmen Ellenberg and Gill (pp. 176, 180). The captain says that the *Vixen* at the harbor entrance told him to proceed, and Solis that the *Vixen's* hail was, "All right; go on," and Clarkson says that they presumed that the *Vixen* had nothing to say to them and was allowing them to proceed. But the *Vixen* was, of course, merely closing them in for capture and sending them on for final seizure. This is quite evident from Morris's statement (p. 119), viz:

> The crew of the *Adula* made out, about a mile and a half before we reached Guantanamo, a small cruiser, and the *Adula* stopped, and the cruiser ran up across the bow and the captain of the cruiser

asked us, "Didn't you sight the war ships down to Santiago?" and the captain said, "Yes;" and the captain stopped and he said, "Didn't you hear that Guantanamo was blockaded?" and our captain said, "Yes;" then he said, "You can proceed on."

The claimants' theory and contention is that they were proceeding to Guantanamo innocently, and that this is plainly revealed because they kept on to the harbor after they saw the war ships, and when they had sufficient time to run away without danger of being overhauled or brought to by shot. The captain says that he could see the vessels in the bay before he rounded the westerly point; that he could see the ships about 4 miles off from his ultimate anchorage (p. 99); but he seems to be referring in this testimony to the time when he was ordered in by the *Vixen*, when he was only half a mile from the entrance to the bay and about 4 miles from where he anchored. Morris says that they found the war ships when they got to the mouth of the harbor, making out the small cruiser about a mile and a half before they reached the harbor (p. 119), and Clarkson thinks there was no seizure made until they had dropped anchor two hours after they had entered port when the first and only notice of the blockade was given them (p. 125); while Hamilton says that they were captured about a mile and a half from the harbor, outside of the channel, laying to for a pilot, the little cruiser having come out and edged along the coast inside of them (p. 131). Hamilton also says that—"We came up by Santiago * * * and * * * stopped right out here in the center of the mouth of the channel, and *then we saw the*

*war ships*" (p. 132). Darling's statement is: "We were right in the center of the mouth of the harbor, outside, when we sighted the war vessel" (p. 142).

The captors' depositions plainly confirm the facts shown by the preponderance of the claimant's testimony, for it appears from the depositions and from one of the charts, which are original exhibits in the case, that the western point of Guantanamo Harbor is a rather high, wooded bluff (p. 147); that the *Marblehead* and *Vixen* could not have been seen by the *Adula* until she was very close to the entrance, and the *Vixen* was proceeding out on her way to Santiago; that the speed of both the *Marblehead* and *Vixen* was so much greater than that of the *Adula* that she would have stood no chance of escape if she had attempted it, even at the farthest moment before seizure when she might have sighted the American vessels, and that the range of the armament, especially that of the *Marblehead*, was such as to render any thought of escape hopeless (pp. 147, 148, 178, 179, 183).

The facts as to the blockade and claimants' knowledge of it, and as to the movements of the *Adula* during May and early in June, 1898, are closely related and may be briefly stated together. On many of the facts there can be no real conflict. By the Executive proclamation of April 22, 1898, Cienfuegos, on the south coast of Cuba, was included in the blockade of the north coast and ports between Cardenas and Bahia Honda (p. 211). This proclamation was duly published to the world and was notified to the owners of the *Adula* by Lieutenant Anderson off Santiago on May 9. The *Marblehead* was then blockading Cienfuegos. (Log, p. 191; Captain Yeats,

p. 99; Lieutenant Anderson, pp. 150, 168.) At that time the *Adula* was proceeding to Kingston from Cienfuegos under permission of the United States authorities obtained from Washington through the consul at Kingston. On the next day she left Cienfuegos with 350 passengers and went to Kingston, and Lieutenant Anderson boarded her again coming out. On May 16 she left Kingston, arriving in Santiago on the 17th, and sailed back again on the same day with 200 passengers. On this trip, too, she proceeded under instructions from Washington, Consul Dent of Kingston merely acting as intermediary. The first voyage was made on behalf of a Mr. Fowler without written agreement; the second on a charter party with a Mr. Portundo (pp. 30, 35, 36, 91, 96, 118, *et passim* in claimants' testimony; Anderson, pp. 151, 167–168). Another trip to Cienfuegos was made from May 23 to 26. (Log entries, pp. 192–195.) On this trip the *Brooklyn* detained the *Adula* and finally let her pass upon the Washington permit, which appears to have legalized this voyage also. In a dispatch dated off Cienfuegos, May 23, contained in the appendix to the Report of the Chief of the Bureau of Navigation for 1898, at the foot of page 74, it is shown that Consul Dent merely countersigned the original orders from Washington. The case of the *Olinde Rodrigues* (174 U. S., 510) in effect rules (p. 521) that the court will take judicial notice of such public facts contained in formal official published reports.

After some difficulty with the Spanish port officials, which was removed through the British vice-consul at Cienfuegos (who seems to be identical with the charterer

on this second trip to Cienfuegos, pp. 30, 37), she entered and then cleared and returned to Kingston with another load of passengers. There were four of these trips to Cienfuegos and Santiago, and five including the final one to Guantanamo (pp. 96, 113, 117, 118). The third trip to Cienfuegos will presently be shown.

On June 8 a blockade *de facto* of Guantanamo was duly established, and thereafter effectively maintained. It does not require Lieutenant Anderson's clear and positive testimony to this effect (pp. 150, 151, 160, 161, 174), nor his testimony that there was a very strict blockade at Santiago as early as the 1st of June, as established by order of Rear-Admiral Sampson (pp. 148, 149, 154), and at Manzanillo (p. 166), for the report of the Bureau of Navigation is filled with proof of the fact—certainly as to Santiago and Guantanamo, as well as Cienfuegos, which will be referred to later; and the general history of the war substantiates the same facts, and, we contend, may properly be regarded by the court under the principle of judicial notice.

The third trip to Cienfuegos was made on June 15, upon a letter dated June 12, expressing a charter party (pp. 32, 33, 38), the *Adula* arriving at Cienfuegos June 17, where she landed 140 or 150 packages or barrels of provisions (p. 33)—the captain says about 200 packages of provisions (pp. 96, 139). The claimant (p. 33) speaks of the charterer's agent, a Mr. Salines, a Cuban; but the purser says (p. 91) that "the ship was under charter that third time to Salcinas, a Cuban *or Spaniard*." Claimant says that the consul did not warn him against making this voyage, but it sufficiently appears, and is in fact admitted,

that they went without permission, and that Mr. Dent informed the owners that it was beyond his authority to give them a pass through the blockade (pp. 32, 91, *et passim*). It seems also that Captain Yeats stated to Lieutenant Anderson that the American consul had refused permission for the vessel to enter the Cuban ports on the voyage she was making (pp. 154, 170), and the captain says that Solis told him after the capture that Consul Dent had refused him permission to go to Guantanamo (p. 102). Claimant says that on this trip they found no vessels outside of Cienfuegos, but at 60 or 70 miles south of Cuba they were spoken by the *Yankee*, who warned them that they must not go back to Cienfuegos, but let them pass (pp. 33, 102). The captain says (p. 102) that on the third trip to Cienfuegos there was no blockade; the way he knew was because he heard the [previous] captain say there were no war ships there.

Now, it may as well be said here that after knowledge of the blockade which the *Adula* had (the previous permission to pass having been refused), it is not permitted to a neutral vessel to say in a temporary absence of the blockading squadron, that, the weather being clear, no blockading vessels were seen, and thereupon to claim immunity from a violation. (*The Baigorry*, 2 Wall., 480; *The Andromeda*, id., 481; Snow's Int. Law (1898), p. 155.)

And it is well settled that a neutral has no right to presume the discontinuance of a *proclaimed* blockade. In *The Circassian* (2 Wall., 135, 150), it is said that in the case of a public blockade the claimant's are held to proof of discontinuance in order to protect themselves

from the penalties of attempted violation of such blockade, meaning a proclaimed blockade as distinguished from a simple blockade or a blockade *de facto*. The court quote the following sentence of Sir William Scott, citing the case of *The Betsey* (1 Rob., 332), and *The Neptune* (Id., 144): "It must be conceived to exist till the revocation of it is actually notified." The court further say:

> It is, indeed, the duty of the belligerent government to give prompt notice; and if it fails to do so, proof of discontinuance may be otherwise made; but, subject to just responsibility to other nations, it must judge for itself when it can dispense with blockade.

However, the *Adula* was not condemned in this proceeding for the breach of blockade at Cienfuegos, although she might have been libeled and condemned for that offense. But evidence of what the vessel did on the previous trip under similar instructions to those she had in this case shows clearly the business in which she was engaged and indicates an intent to enter in this case.

On June 27 the blockade was extended on the south coast of Cuba from Cape Francis to Cape Cruz, inclusive. This shut off the great bight on the south coast and included the ports of Cienfuegos and Manzanillo. It is likely that this blockade as proclaimed was not extended to Santiago and Guantanamo, because, as to Santiago, the blockade and investment there for about thirty days previous, and ending in the great naval battle within a few days after the *Adula* sailed for Guantanamo, was notorious to all the world and was impregnable; and as to

Guantanamo, a later proclaimed blockade might very naturally be considered as likely to weaken the just claim to effectiveness of the blockade *de facto* in the interim between June 8 and June 27. The *fact* of the blockade of June 27, with special reference to the proclamation, which included Manzanillo, one of the *Adula's* ports of destination, is shown by nearly all the claimants' witnesses, because they say they were told of it when they reached Guantanamo. They really admit far more than this, as will be presently shown, both as to the blockade *de facto* and the blockade proclaimed.

Taking up now the facts of history on the subject, it might be argued on the Navy reports that the blockade operations at Manzanillo did not become strictly effective and continuous until about the time of the proclamation of June 27, or immediately thereafter. But we are not especially concerned with Manzanillo; and in any event if the claimants knew of the latter proclamation before they left Kingston, they knew that Manzanillo was barred to them. As to Cienfuegos, as early as April 29, there was a naval division before that port, which included the *Marblehead*, the *Nashville*, and the *Eagle;* a Spanish merchant vessel was captured, a torpedo boat engaged, cable-cutting performed, and the shore batteries bombarded. The flying squadron blockaded there for about a week before proceeding on to Santiago, and through May and June the *Marblehead* herself, as well as the *Yankee*, with various other vessels, were on duty there, professedly blockading under the earlier proclamation and maintaining a strict blockade. (Report of the Chief of the Bureau of Navigation, pp. 183, 200, 214, 217, 350,

393, 403, 423.) As to Santiago, the fact is beyond question. The operations there began with cable cutting by the *St. Louis* before the Spanish fleet entered. After the arrival of the flying squadron about May 24, where they found the *St. Paul*, *Yale*, and *Minneapolis*, Rear-Admiral Sampson soon took command, and that became the chief blockading station along that coast. The subsequent history of it is well known—the landing of the expedition somewhat to the east on June 22, and the naval battle of July 3. To mention one fact among many shown by the records, the admiral's order of battle dated June 2, directs that the vessels will blockade Santiago de Cuba closely, keeping about 6 miles from the Morro in the daytime, and closing in at night, the lighter vessels well in shore, and on June 12 he ordered our vessels to maintain a blockading distance of 4 miles during the daytime and directed this distance not to be exceeded except on permission under special circumstances. (Appendix to report, etc., pp. 208, 210, 450, 481, 514.)

Now, particularly as to the case of Guantanamo, repeating that the facts involved are matters of open history and are in public official reports as well as in many accurate accounts and histories of the war already written, and referring now especially to the records in the report of the Bureau of Navigation—the cable cutting at Guantanamo was intended and ordered as early as April 9 and April 20 (p. 173), and was attempted May 19 (p. 210). Under date of June 8 the admiral says (p. 488) that he sent the *Marblehead* and the *Yankee* from the main blockade at Santiago on June 7 to arrive at Guantanamo by early daylight, their instructions being not to enter upper

portions of the bay, but to hold the lower bay for the accommodation of our ships, and that this was successfully accomplished. On the 10th the *Panther* was sent in company with the *Yosemite*, and the marine battalion transported on the *Panther* was landed and established in camp (p. 489; see also p. 441). On June 15 the *Texas*, with the *Suwanee*, joined the *Marblehead* at Guantanamo, and some of the outer harbor defenses were bombarded (p. 447). The *Texas* then resumed her place on the Santiago station. On June 24 the admiral received among others a dispatch from Washington informing him of the report mentioned throughout this record that an officer or officers of the Spanish Government in Cuba had gone to Kingston on one of the previous trips of the *Adula* with a large sum of money to establish a base for provision shipments (p. 501). On this day, or at least before the seizure, it seems that Admiral Sampson issued a bulletin ordering a lookout to be kept by the American fleet for the *Adula*, as she was supposed to have had General Blanco's private secretary on board, and besides had left Kingston without permission of the American consul, and in spite of his warning (Rec., p. 153). Bearing in mind Lieutenant Anderson's positive testimony about the strictness and continuance of the Guantanamo blockade, it is evident from all sources that the *Marblehead* remained there on that duty; and the fact of the blockade is conclusively established from Spanish testimony, because at pages 451 and 496, Bureau of Navigation Appendix, appears a translation of a letter dated June 10, which was captured by the Cubans en route to Santiago, from General Pareja, of the Second Brigade of the Cuban

Division of the Spanish army, describing the operations about the Caimanera or outer harbor of Guantanamo, from which the following quotations are drawn:

> The seventh day [June 7] at dawn brought seven ships before the port of Caimanera. They fired grapeshot and all kinds of projectiles on the Playa del Este and Cayo Toro * * *. This * * * lasted * * * until 5 o'clock in the afternoon. * * * From that day * * * ships * * * occupy the outer port with a transport of war and a variable number of armed ships and other vessels of war and armed merchant ships; total never less than four. * * * The American squadron in possession of the outer bay has taken it as if for a harbor of rest, they having anchored as if one of their own ports since the 7th, the day they cut the cables. * * * To-day there is in the harbor a large armored vessel and seven more vessels, with a large transport that appears to be a storeship. They patrol Playa del Este with armed launches, I have just been informed. * * *

See also, as to the extent to which our forces held or controlled Guantanamo Bay, the testimony of Lieutenant Anderson, at page 173 of Record.

Now, the claimants advance a theory that Guantanamo was in possession of our forces. This would necessarily mean that ingress and egress was free, which, of course, was not the case. We were seeking to invest the outer port defenses, and were at the same time blockading it; but in no sense were we ever in possession of this outer territory, much less of the inner harbor or the city of Guantanamo. Now, the *Circassian Case* (2 Wall., 135) shows that the occupation of a city by a blockading belligerent does not

terminate a public blockade of it previously existing; the city itself being hostile, the opposing enemy in the neighborhood, and the occupation limited, recent, and subject to the vicissitudes of war. Still less does it terminate a blockade proclaimed and maintained not only against that city, but against the port and district commercially dependent upon it and blockaded by its blockade. By this theory, too, the claimants appear to draw some distinction between a military investment and a commercial blockade, but this is not tenable in view of many authorities on the law of blockade, and especially of the decision in the *Olinde Rodrigues* Case, *supra*. There was at Guantanamo a landing of marines and the beginning of a military investment, and a commercial and military blockade as well. In reference to this point it is to be observed that the treaty with Great Britain of 1794, although now abrogated or obsolete, contains a clause (Treaties and Conventions between the United States and other Powers, Washington, 1889, p. 390) which throws light upon the case, especially in view of the fact that this is a British vessel, because the language is that vessels of the two powers, respectively, may be turned away from a port or place either *besieged, blockaded, or invested*, and shall not be detained nor their cargoes confiscated, unless after notice they shall then attempt to enter; and the clause uses the same phrase "besieged, blockaded, or invested" in reference to an entry into a port before the blockade is established.

Thus much for the fact of the Guantanamo blockade.

Finally, as to the claimants' and charterer's knowledge of the Guantanamo blockade and the proclamation of

June 27. Mr. Forwood says in his *ex parte* statement (p. 35) that the official notification of the blockade of the three ports of Guantanamo, Santiago, and Mazanillo was not declared by the British Government at Jamaica until July 6. He probably refers to the declaration of the proclamation of June 27. He does not say that either the blockade or the proclamation was unknown on the island at the time the *Adula* sailed. The purser did not know that Guantanamo was blockaded. The captain knew when he left Kingston that there was a state of war at Guantanamo; but although the owner told him he would meet war vessels at Guantanamo as off Santiago, he did not know anything about a blockade at Guantanamo "*in the strict sense of the word;*" at the time he went there it was apparently under an order of blockade, but no warning or notice had been given him, and the first time he knew of the blockade was when Commander McCalla told him he had no right there (p. 98). But Solis says they told him *on board the Adula* that the blockade of Guantanamo was published "the 27th, *the day before*" (p. 108). That must have been on the 28th, either before they left Kingston or at least some hours before they sighted the Cuban coast on the early morning of the 29th. It is true, he says immediately afterwards, that he had not heard it before he left Kingston, and did not know it until he arrived at Guantanamo, but this obviously should be read in the light of the intermediate sentence, "I did not know *officially* Guantanamo was blockaded." He had heard of the landing of the marines; he understood there were some war ships there; but he did not think the Kingston

newpapers published the blockade, and he "understood that Guantanamo was not declared officially blockaded." He told Captain Forwood that the first thing he would do would be to go to the Admiral and tell him his intentions, and he thought that even being blockaded, the Admiral would give him permission to go and get refugees from the ports in question (pp. 108, 109, 113). Now, Morris heard on the streets of Kingston, three days before, that Guantanamo was blockaded, and he says that when the *Vixen* hailed the *Adula* and Captain Yeats was asked whether he had not sighted the war ships at Santiago, and whether he had not heard that Guantanamo was blockaded, the captain answered yes to both questions (p. 119); and Morris had heard on each trip before leaving Kingston that the ports of Santiago, Cienfuegos, and Guantanamo were blockaded (p. 121). The chief officer never knew of any order being given for the blockade of Guantanamo before they entered, but he knew the American fleet had been there or might possibly be there. The other witnesses of the claimants deny knowledge of the blockade. Mr. Forwood's letter to Captain Yeats betrays knowledge of the facts at Guantanamo, for he says (pp. 186, 187):

> On your arrival at Guantanamo, to which port you will proceed direct, you will find, no doubt, American war ships off the port. * * * From Guantanamo you will proceed to off Santiago. Here you will meet the other fleet, and carry the same instructions out with them as I have mentioned to you in reference to Guantanamo. The charterer is telegraphing at once to Santiago for a pilot to come off to meet the ship, if permission is granted, to pilot your ship into the port. * * *

Mr. Forwood then formally cautions the captain against doing anything "that could be interpreted as a breach of faith in being allowed to pass the blockade and enter the ports." Lieutenant Anderson says that Solis told him that as the *Adula* had previously entered twice at Cienfuegos through the blockade without permission or authority he thought he might do the same. The Kingston newspapers, in evidence (pp. 86, 159, 215, 219), show that on June 14 the landing of the marines at Guantanamo or Caimanera was published at Kingston, and that the statement was made from a London cablegram that the landing was made in order to acquire for Admiral Sampson a base for coaling and supplies; that the landing of the marines was made under the protection of the war ships, the *Marblehead* being named; and that the Americans now hold 35 miles of the coast east of Santiago, including Guantanamo Harbor. The bombardment at Caimanera by the *Texas* and *Marblehead* is also noted in the Kingston Gleaner of June 25.

B. *As to the law.*

We submit that the foregoing facts show a sailing from a neutral port with intent to enter a blockaded port, and an attempt to do so. We therefore contend that one of the two following statements is beyond question applicable to this case:

(*a*) The vessel was plainly engaged in a violation of the blockade with knowledge thereof, and must be condemned. For this it is not necessary to cite authorities at length; it is the unquestioned basis upon which the

law affecting neutral responsibility in reference to blockades rests, and the authorities are without number. (*The Circassian*, 2 Wall., 135; *The Baigorry*, id., 474; *The Cornelius*, 3 Wall., 214; *The Cheshire*, id., 231; *The Bermuda*, id., 514; *The Admiral*, id., 603; *The Herald*, id., 768.)

The statement in the *Circassian* Case (2 Wall., 135, 151), is as follows:

> It is a well-established principle of prize law, as administered by the courts, both of the United States and Great Britain, that sailing from a neutral port with intent to enter a blockaded port, and with knowledge of the existence of the blockade, subjects the vessel, and, in most cases, its cargo, to capture and condemnation. We are entirely satisfied with this rule. It was established with some hesitation, when sailing vessels were the only vehicles of ocean commerce; but now, when steam and electricity have made all nations neighbors, and blockade running from neutral ports seems to have been organized as a business and almost raised to a profession, it is clearly seen to be indispensable to the efficient exercise of belligerent rights. It is not likely to be abandoned until the nations, by treaty, shall consent to abolish capture of private property on the seas, and with it the whole law and practice of commercial blockade.

(*b*) Or else the vessel, seeking to elude the blockade (which is equally a violation) rather than openly break it, and professing an innocence which did not exist, approached a blockaded and invested port for inquiry, which under the circumstances was not permissible and equally subjects her to condemnation. As in the case of

*The Cheshire* (3 Wall., 231), she knew of the blockade and investment when she sailed; she had no just reason to suppose it had been discontinued, and her approach under these circumstances to the mouth of the blockaded port for inquiry was itself a breach of the blockade and subjected both vessel and cargo to seizure and condemnation. It will be noticed that in *The Cheshire* Case the captain's instructions were "to call off Savannah merely for the purpose of inquiry, but on no account whatever to enter a blockaded port." The opinion of Mr. Justice Field, speaking for the court in that case, continues (p. 235):

> The rule on this point is well settled, and is founded on obvious reasons of policy. If approach for inquiry were permissible, it will be readily seen that the greatest facilities would be afforded to elude the blockade; the liberty of inquiry would be a license to attempt to enter the blockaded port; and that information was sought would be the plea in every case of seizure. With a liberty of this kind the difficulty of enforcing an efficient blockade would be greatly augmented. If information be honestly desired, it must be sought from other quarters. In the case of the *James Cooke* (Edw., 263) the ship was captured at the entrance of the Texel, and the court applied this rule, observing that the approach of the ship to the mouth of a blockaded port, even to make inquiry, was *in itself* a consummation of the offense and amounted to an actual breach of the blockade.

See also the case of *The Josephine* (id., 83), in which it was held that if a vessel is found without a proper license near a blockading squadron under circumstances

indicating intent to run the blockade, and in such a position as that if not prevented she might pass the blockading force, she can not thus, *flagrante facto*, set up as an excuse that she was seeking the squadron with a view of getting an authority to go on her desired voyage.

Let us consider also the case of *The Admiral* on this proposition. (3 Wall., 603, 615, 616.) In that case it was insisted that the mere act of sailing from a port that was blockaded at the time the voyage was commenced is not an offense against the law of nations where there is no premeditated intention of breaking the blockade. The court granted that proposition, but held that it was equally well established that it is illegal for a ship having knowledge of an existing blockade to attempt to enter a port in violation of the blockade, and called attention to the decision in the *Circassian* Case and other cases, that the act of sailing for a blockaded port after notification, with an intent to violate the same, is in itself illegal. The court then consider the further facts in the case at bar, which show that the *Admiral* had, not an enemy license or passport as in this case, but a doubtful clearance. The principle and the language of the court are therefore fully applicable to this case, which, on the enemy passport, is really stronger.

> * * * The master did not present the certificate of clearance, *but resorted to the terms of the charter party and the letter of instructions*, and insisted that those showed that the vessel did not intend to violate the blockade regulations. Arrested, as the ship was, when near the blockaded port and when heading for the land, and when in point of fact she was in the act of entering the port, the master then,

> instead of presenting the clearance for the port which he had passed, set up the pretense that his purpose was to inquire whether the blockade had been raised, and claimed that he must be first notified of a fact, which he knew when the ship sailed, before capture could lawfully be made. Such a defense is without merit and finds no support in any decided case or in any acknowledged principle applicable to prize adjudications. * * * Every pretense that the vessel intended to desist from her unlawful purpose if she found that the port was blockaded is negatived by the circumstances. Those in charge of her knew before she sailed that the port was blockaded, and they also knew that they had no reason to suppose that it was to be raised before her arrival. *Consequently, they made no inquiry and did not wish to make any until it became necessary to do so as a defense or excuse for an illegal act.*

The *Adula's* purpose here was to inquire whether they could enter. This was exactly the same as to inquire whether a blockade of which they knew had been raised.

The foregoing cases are conclusive and final authority against the vessel in this case, and no further citation would seem to be required.

It is to be remembered that the owners and charterer profess an intention to inquire of the admiral, and they must have known, in view of the long continuance of the blockading operations at Santiago, that that point was the main blockading station, and yet, when on their voyage, edging westerly all the time, away from Guantanamo and toward Santiago, they approached the blockading squadron at Santiago where the admiral's headquarters were, they sheered off and went due east to Guantanamo without inquiry.

As to the dependence and connection existing between a minor blockading operation in the same territory and the main blockade station, see the case of *The Nancy* (1 Acton's Privy Council Cases, 64).

As to the blockading record at Guantanamo, with especial reference to the commercial side thereof, the record in another case before this court, that of the *Newfoundland*, shows that that vessel was turned back by the squadron at Guantanamo in June. Justice Story says (Notes on the Principles and Practice of Prize Courts, p. 54) that even upon an original hearing papers found on board another captured ship may be invoked into the cause and used by the captors without an order for further proof. This rule would seem to apply to facts shown by the testimony *in preparatorio* in another cause. Lieutenant Anderson, testifying that the blockade at Guantanamo had been active, effectual, and continuous after June 8, speaks of another foreign vessel turned back.

It is evident, as the court below said, that the claimants' own testimony shows that the vessel in the control of a Spanish subject was being used with the owner's concurrence "to run the blockade in the absence of blockading vessels, or by practicing upon the credulity of American commanders," when this could be done with impunity.

## III, IV.

*Further proof was properly refused, and the testimony objected to was properly admitted.*

The opinion of the court below (p. 57) states the established rule in prize cases, namely, that the papers and

examinations *in preparatorio* constitute the only evidence on which the cause is first heard, and that if upon this evidence there be doubt, or justice require it, the court may in its discretion order further proof. The rule is also stated by Mr. Justice Story in the case of *The Pizarro* (2 Wheat., 240), which notes the fact that if the prize courts should not exercise a sound discretion and should improperly deny or allow further proof, the appellate court can administer the proper relief.

The offer of further proof in the present case substantially showed either that the new evidence proposed was irrelevant (as, for instance, concerning the charterer's friendly relations with the Cuban insurgents and his good intentions toward citizens of the United States in Cuba), or else was contrary to the testimony given before the prize commissioners (as, for instance, that he was a loyal subject of Spain). The court below also calls attention to the fact that the proof *in preparatorio* was to the effect that the business of Solis was suspicious in the extreme; that he had been previously carrying on a large business in the shipping of supplies, and that now by the additional proof the claimant wishes to show that Solis was not engaged in trade with blockaded ports or with any ports of Cuba with which intercourse was unlawful. As to this the court remarks that Solis had ample opportunity to give such an explanation of the letters found on board, and that he should not afterwards be permitted to add to his testimony; that the letters related to trade and commerce, the conveyance of which through the blockade, especially by a Spanish subject, was a violation of the laws of neutrality.

The rule in reference to this subject is stated by Mr. Justice Story in *The Pizarro, supra:*

> Nor should the captured crew have been permitted to be reexamined in court. They are bound to declare the whole truth upon their first examination, and if they then fraudulently suppress any material facts they ought not to be indulged with an opportunity to disclose what they please or to give color to their former statements after counsel has been taken and they know the pressure of the cause. Public policy and justice equally point out the necessity of an inflexible adherence to this rule.

Now, it is to be noted that the charterer is to be treated as one of the crew; while he was charterer, and appears to have been a Spanish subject of influence and means, he was entered upon the ship's books as supercargo, and the animadversions of Justice Story in the *Pizarro* case are directed against a supercargo.

In *The Gray Jacket* (5 Wall., p. 368), Mr. Justice Swayne, speaking for the court, said:

> This is not a proper case for the order for further proof. The order is always made with extreme caution, and only where the ends of justice clearly require it. The claimant forfeited all right to ask it by the guilty concealment in his first affidavit. * * * The allowance would hold out the strongest temptation to subornation of perjury.

The general rule about the allowance of further proof is shown by the following quotations from Mr. Justice Story's notes in the appendix to volumes 1 and 2 of Wheaton's Reports, which are consolidated in the vol-

ume called "Notes on the Principles and Practice of Prize Courts." That volume is here cited (p. 18):

> It is therefore of the last importance to preserve the most rigid exactness as to the admission of evidence, since temptations would otherwise be held out to the captured crew to defeat the just rights of the captors by subsequent contrivances, explanations, and frauds. There can be no honest reason why the whole truth should not be told by the captured persons at the first examination, and if they then prevaricate or suppress important facts it must be from motives which would materially impair the credibility of their subsequent statements.
>
> The court is in no case concluded by the original evidence, but may order further proof on a doubt arising from any source or quarter, * * * but this is rarely done unless there be something in the original evidence which lays a suggestion for prosecuting the inquiry further (p. 24).

In the latter portion of this passage Justice Story is evidently considering, from what follows, the reverse case of the captors seeking further proof where the decree restores. The general principle is that "further proof is in no case a matter of right, and rests in the sound discretion of the court." (Id.) Further proof is not allowed to the captors if the cause (in favor of the claimants) does not appear doubtful upon the original papers and the answers to the standing interrogatories. Otherwise, if the parties have conducted themselves with good faith, the court will indulge them with time to supply defects of proof, though this privilege may be forfeited by either party through fraud or gross misconduct.

> Further proof is never allowed to the claimants where fraudulent papers have been used; where there

> has been a spoliation of papers; where there has been a fraudulent covering or suppression of an enemy's interest; where there is a false destination and false papers; nor, in general, where the case appears incapable of fair explanation or where there has been gross prevarication or an attempt to impose spurious claims upon the court, or such a want of good faith as shows that the parties can not safely be trusted with an order for further proof. (Id., 25, 26, and auth. cit.)

The claimants in the nineteenth specification of error specially complain because the court did not order the taking of Captain McCalla's testimony on the question of the delivery of the Spanish passport to him by Solis. The brief for the captors, filed in this case, shows clearly what evidence the claimants proposed to take under their motion for further proof, and they have never suggested in any way below that they wished to take Captain McCalla's testimony, which offer, however, if made, would have been properly refused by the court. We therefore submit that the discretion of the prize court was soundly exercised, and that the denial of the order for further proof (p. 49, opin. p. 57 *et seq.*, *passim*) was properly ordered.

As to the depositions *de bene esse*, the court below (pp. 62, 63), while mentioning the depositions, does not rely upon them, and holds that they are not "essential to the determination of this question now, although formerly submitted by the United States attorney as cause why the case should not be reopened." By section 4618, Revised Statutes, the United States attorney is directed to "see that the proper preparatory evidence is taken by the prize commissioners, and that the prize commission-

ers also take the depositions *de bene esse* of the prize crew and of other transient persons cognizant of any facts bearing on condemnation or distribution." The reason of this is obvious and natural; the testimony of the prize crew might be essential or important, and yet in their service they might at once pass beyond the control and reach of the court or the commissioners. This evidence might very properly have been used below, and is very properly in the record and before the court now, because it was a counter showing of evidence regularly and formally taken and was in opposition to the *ex parte* affidavit and statement shown at page 25 *et seq.* on behalf of the claimants; and for the other reasons given in the tender of the depositions by the United States (p. 48), especially as to the fact of the blockade and the position of the *Adula* when captured. Therefore, we respectfully submit, that if there is any real doubt in the mind of the court as to the liability of this vessel to condemnation on the testimony *in preparatorio* it is very proper in resolving such possible doubt to consider the depositions, which the law directs to be taken, and which contain the evidence of those best able to state the truth of the significant facts (if any real conflict be perceived) and who were subjected to the claimant's cross-examination.

As to the letter of Captain Yeats to his parents, dated July 13, containing a clipping of the New York Sun of June 29 (pp. 234–237), it is not clear how this letter came to be incorporated in the record. It was written after capture, but it was found on board, and apparently just before arrival at Savannah. For this reason it may be regarded as properly enough to be included with the

other papers turned in to the prize commissioners after arrival, and it may be rightly regarded and considered as an admission or confession, and as such to be taken strongly against the claimants. The significant points shown by it are that the captain had anticipated seizure; that Mr. Solis was a Spaniard; that after seizure everything went well until Mr. Solis "was spotted;" that the copy of the Sun publishing, on June 29, a Jamaica cablegram of June 28, told the story of the *Adula's* bringing to Kingston General Blanco's secretary and other Spanish military officers and agents, and that it was recognized in Kingston in view of all the facts that the *Adula's* trip contained a mystery covered by some plausible pretext or plea as to refugees or British subjects, the belief being that her secret mission was to communicate with Admiral Cervera or General Linares. The letter itself admits the presence of General Blanco's secretary, and anticipates the possibility of Mr. Solis being proved guilty of trying to carry dispatches. The cablegram in the Sun clipping also shows that it was fully known in Kingston that Admiral Sampson had previously said that if the *Adula* again tried to enter Cienfuegos she would be seized, and that the correspondent and presumably the inhabitants were awaiting the result of her now presenting herself at other south Cuban ports.

As to the brief for the appellant, it appears to deal in the main with the case as entitled to the application of certain ethical considerations and entitled to be decided on the humanitarian motive alleged, and to expect that possible future reforms in the character and methods of warfare should be viewed as justifying the release of the

the property involved here. The arguments of the brief are, we respectfully submit, completely answered by the references and replies thereto contained in the brief for the naval captors filed in the cause.

In conclusion, we respectfully point out to the court that this is a typical case of blockade running from a near point of vantage in neutral territory. The owners were dealing with both belligerents; they were serving one and using the other covertly and illegally. Their vessel had been employed and their agents had been engaged in hoodwinking the United States authorities upon professions of innocence and of a disinterested object during a considerable period of time and on many occasions. They were engaged in illegal and hazardous ventures, and they knew it, and took the risk. The guilty acts and the knowledge showing responsibility on the final fatal trip fully appear in this record. The neutral owners disregarded the obligations of their national neutrality and are subject to the immemorial penalty of prize law.

We respectfully submit that the decree of the court below, by which the vessel, her engines, furniture, provisions, supplies, etc., were condemned as lawful prize for an attempt to run the blockade as charged in the libel, as well as enemy property, be affirmed, and that the costs in accordance with the usual admiralty rule follow the decree.

HENRY M. HOYT,
*Assistant Attorney-General.*

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Supreme Court of the United States.

Brief of Jos. K. McCammon & James H. Hayden for Captors.

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THE STEAMSHIP "ADULA," HER ENGINES, BOILERS, TACKLE, APPAREL, &c., THE ATLAS STEAMSHIP COMPANY (LIMITED), CLAIMANT, APPELLANT,

*vs.*

THE UNITED STATES.

No. 167.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

# BRIEF FOR THE CAPTORS.

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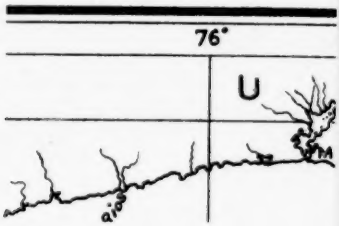


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# Supreme Court of the United States.

OCTOBER TERM, 1899.

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| THE STEAMSHIP "ADULA," HER ENGINES, BOILERS, TACKLE, APPAREL, &c.; THE ATLAS STEAMSHIP COMPANY (LIMITED), CLAIMANT, APPELLANT, *v.* THE UNITED STATES. | *No.* 167. |

## BRIEF FOR THE CAPTORS.

This is an appeal from a decree of the District Court of the United States for the Southern District of Georgia, by which the British Steamship *Adula* was condemned as a prize of war, for breach of blockade and also as enemy property.

The questions presented involve the legality and efficiency of the blockade; the adequacy of notice to shipping of neutral nations, in general, and to the *Adula*, in particular; and the neutrality of the vessel. To deal understandingly with these, we must review the progress of the war about the southern coast of Cuba, and the vessel's record for some weeks prior to her capture.

## Statement of Facts.

The *Adula* was of 372 tons registry. She was built at Belfast, Ireland, in 1889 (pp. 88, 89), for her owner, the Atlas Steamship Company, Limited, a British corporation, and was registered in the name of one of its directors, W. B. Forwood, a British subject. Since 1889, she had been regularly employed in the coasting trade of Jamaica, and from time to time had made voyages between Kingston and Cuban ports (pp. 88–90, 95). An act of Congress approved on April 25, 1898, declared that a state of war between the United States and Spain had existed since April 21st. On April 22d, by proclamation of the President, formal notice was given of the blockade of many ports on the northern coast of Cuba and of Cienfuegos on the southern coast (pp. 211–212). An effective blockade was established, forthwith. About May 7, the *Adula* obtained from the United States a permit authorizing her to pass the blockade and proceed to Cienfuegos in ballast, for the purpose of taking on Cuban refugees (p. 35). This was issued by the United States consul at Kingston, with the approval of the Secretary of the Navy. She cleared from Kingston without a cargo. When approaching Cienfuegos, she was stopped by the blockading fleet, boarded by Lieut. Anderson of the U. S. S. *Marblehead*, and formally notified of the blockade through an endorsement in her log and the service of a copy of the President's proclamation. In consideration of her passport, she was allowed to enter Cienfuegos (p. 150). On May 21st, with a like permit, she made a second voyage from Kingston to Cienfuegos, in ballast, under charter to one Fowler (p. 36). Again she was stopped and boarded and was detained for some time by the blockading fleet before being allowed to pass (p. 192).

During her return voyage to Kingston, on May 26th, she did not sight a blockading vessel. On June 15th, she sailed, a third time for Cienfuegos with a cargo and under charter. Yeates, then first officer of the vessel, did not know whether the charterer was a Spaniard or not (p. 102). She had no passport for this voyage, but managed to enter Cienfuegos without interference and there delivered her cargo (pp. 96–102). Few persons took passage on her for Kingston. On the return voyage, she was boarded by an officer from the U. S. S. *Yankee*, who examined her papers. She was detained for some time, and when finally permitted to proceed, her master was warned again that the port of Cienfuegos was blockaded and that he must not attempt to enter it again. These facts were entered in the *Adula's* log (p. 196). After her capture a copy of a newspaper, published in Kingston, on June 25th, was found on board, which contained this:

> "* * * On board the *Adula* which arrived from Cienfuegos this week, there was an individual officially appointed by the Captain General in Cuba to make arrangements in Jamaica for regularly supplying the Spanish troops with provisions—in fact, to make Jamaica a base for Spanish purposes. This gentleman's name was given us as Ramon Pastora. He is accompanied by two pilots who know the south coast of Cuba perfectly."

On the first of June the United States fleet, under the command of Rear Admiral Sampson, established an actual and effective blockade of the port of Santiago, where lay the Spanish fleet under the command of Admiral Cervera. On the eighth of June, the blockade of Guantanamo Bay was established by order of Admiral Sampson, the blockading squadron being under the command of Commander McCalla, U. S. Navy. Both of these

blockades were maintained strictly and continuously throughout the war (pp. 148–149). During the month of June large numbers of marines and troops were landed about Guantanamo Bay. In its immediate vicinity, several engagements took place between the land forces of the United States and Spain, and the Spanish positions were frequently bombarded by the naval vessels lying in the bay. The Spaniards held the town of Guantanamo and many places in the vicinity until some four or five weeks later, but, on the ~~western~~ eastern shore of the bay, the United States forces established a base for the military campaign in progress against Santiago, and a coaling and supply station for the naval fleet. These events are matters of history. They became notorious, throughout the civilized world, almost as soon as they transpired. They were particularly well known in Kingston because intimate business relations had existed between Jamaica and Cuba and close cable communication was preserved during the war. Newspapers published in Kingston contained articles in which these military and naval operations were described (pp. 153–154). Copies of some of them were found on the *Adula* (pp. 159, 215–219).

On June 27th, by proclamation of the President, formal notice was given that the Cuban blockade had been extended and included all ports on the southern coast between Cape Frances and Cape Cruz. This included the port of Manzanillo. On the 28th it was made known to the vessels on blockade at Guantanamo (pp. 161–162).

On June 27th the *Adula*, then at Kingston, was engaged in taking on a cargo for shipment. On the 28th, she discharged this cargo and took on a large supply of coal (pp. 154–155). About the same time she was chartered to Jose R. Solis, a Spanish subject, formerly a resident of Manzanillo (pp. 89, 95). The charter-party

provided that her owners would put the vessel at the disposal of Solis for the conveyance of passengers from Manzanillo, Santiago, and Guantanamo, to Kingston, provided, however, that the charter should not be considered broken if the vessel were prevented from entering any of the Cuban ports named, for causes beyond her control; that if she were able to enter one or all of the ports she should embark the passengers engaged for her by Solis and proceed on her voyage, but if she were not permitted to enter any of the ports, she should return to Kingston, whereupon the voyage should be considered complete and the charter-money earned without deductions. Solis agreed to pay all port and pilot charges, to obtain proper clearances for each port, and to pay for the vessel at the rate of £100 for each day or part of a day for the first ten days of a voyage, and thereafter at the rate of £50 per day. The minimum charter-money was fixed at £500. It was further provided: "The Company will give the option to the charterer for another similar voyage on similar terms, provided the charterer gives the Company twenty-four hours' notice after the arrival of the steamer at Kingston" (pp. 168–169).

Immediately after signing the charter, Solis cabled to Santiago for a licensed Spanish pilot to meet the *Adula* (p. 187).

Forwood, the managing owner of the vessel, directed a letter of instructions to Yeates, her master, in which was enclosed a copy of the charter and orders directing him to proceed to Guantanamo, but warned him that he would find both that port and Santiago invested by vessels of the United States Navy. He was told to take no risk, but to stop, immediately, if ordered to do so, and in that event to endeavor to get permission to pass the blockade from the officer in command of the fleet. The letter advised him that Solis had

cabled for a pilot, licensed by the Spanish Government, to meet the *Adula* off Santiago and convey her into port (pp. 186–187). By a private verbal agreement made between Solis and the owners, it was arranged that after proceeding to Guantanamo, Santiago, and Manzanillo, the vessel should call at other ports to be indicated to the master by Solis. Instructions to this effect were given the master (pp. 97, 18th answer; 101, 39th answer). It appears from correspondence found on the *Adula*, in Solis's possession, that during the war he had carried on an extensive business in the way of shipping supplies to Cuban ports, held by Spain, and transporting passengers from Cuba to Jamaica. He had just returned from Manzanillo, which was then held by Spain. These facts were known to the Atlas Company before the charter was signed. Solis testified that he had no object other than to transport Cuban refugees to Jamaica, and that he was actuated by humanitarian motives; but he admitted that he had found the business profitable, and that he expected to make a large profit out of the voyage of the *Adula* (p. 110). Although she carried no cargo, Solis was enrolled on the ship's books as "supercargo," or assistant to the purser (p. 92). He testified that the agents of the vessel advised him to join the ship's company in that capacity to avoid any difficulties which might arise from his sailing as a passenger or as the charterer (p. 105). Pursuant to his agreement with the owners, he obtained from the Spanish consul at Kingston a passport authorizing him to take the *Adula* into any Spanish port (106, 12th). Solis testified that he delivered all of his papers to Commander McCalla, of the U. S. S. *Marblehead*, but this passport was not found among those delivered to the prize master or the prize commissioners. He said (p. 111):

"I had a document about which I told you before, that I obtained from the Spanish consul in Kingston, in which document it says to the authorities of any Spanish port where the *Adula* may go to allow Mr. Solis to take out passengers, since he does it for the sake of humanity. That is what I understand it says on the paper."

The ship's bill of health, described her as bound for Manzanillo, Guantanamo, and Santiago. It bore an endorsement of approval by the Spanish counsel (pp. 89, 96, 219). Solis also tried to get a passport for the voyage from Dent, the United States consul, who refused to give it (p. 152). In his deposition, Solis said (p. 113):

"I knew there were troops and vessels in Caymanera Bay or Guantanamo Bay, as you call it. I knew that perhaps the day before [June 26th]. I do not remember exactly. I do not remember anything about the President declaring the blockade. I did not know anything officially until I arrived at Caymenera or Guantanamo. . . . I went to Consul Dent's office and asked permission to go to those ports [Guantanamo, Santiago, Manzanillo]. He asked me whether I had the consent of the Spanish consul. I said I had it. Then he said to me he was sorry he could not give me such permission; that he was not allowed to give such permission; that it could only come from Washington, from the Government. I saw there was no time to get permission from Washington, and being under an expense of one hundred pounds every day and thinking there was nothing wrong in taking refugees from Cuba, I thought;—going direct to the United States Navy and asking permission from the Admiral, or Commodore or whatever chief I met, I did not think they would refuse me permission to go. I had information there were United States vessels on the south coast of Cuba. Of course, their object was to do as much

> damage as they could to the enemy. Mr. Dent told me not to go. I do not remember his giving any particular reason for not going. . . . He said to me he could not give me permission. Then I said to him I decided to go and I do not think there will be any harm for me, since I did not go for any bad thing, but only to bring refugees. I did not think I did any harm to the United States in that. I do not remember Mr. Dent telling me the vessel would be liable to capture. He said I ought not to go and that he could not give me such permission."

He repeated the substance of this conversation to Yeates, the master of the *Adula*, before she put to sea (p. 170).

A few minutes before she sailed from Kingston, Dent went to the office of the Atlas Steamship Company and warned W. P. Forwood, its agent, of the blockade of Guantanamo, and told him that Solis was suspected of being a secret agent of the Spanish government. Forwood admits that Dent said: "Well, Forwood, I would not advise you to let the ship go. They won't let her into Guantanamo, and they will be watching for her" (p. 34).

Solis testified (p. 108, 21st ans.):

> "They told me on board the *Adula* that the blockade of Guantanamo was published on the 27th, the day before."

Solis had in his possession, on board the vessel, a large number of letters which he had undertaken to deliver in Cuba. One of them was directed to a resident of the blockaded port of Manzanillo and contained this paragraph (p. 223):

> "After six weeks of having been unable to write to you on account of the presence of the American

squadron before that port, to-day I am told with great secrecy that Mr. Solis of Manzanillo, with the steamer *Adula*, English, is going to run the blockade to carry provisions or take out passengers. I take this opportunity, with great pleasure, of hearing from you and of my house. We know no other news here than that from American sources; otherwise this town is very tranquil, and everybody respects us as we mix with no one."

Forwood and Yeates, the master, Solis, and other members of the captured crew, who were examined *in preparatorio*, admitted that they knew of the military and naval operations about the southern coast of Cuba and knew that Santiago and Guantanamo were closely invested by the United States forces. Horatio Morris, one of the crew, testified (p. 118):

"At the time we sailed for Guantanamo I knew that war was going on between the United States and Cuba. Guantanamo is in Cuba, and I knew that war was going on between Cuba and the United States. About three days before I left Kingston I heard that Guantanamo was blockaded; I heard it from people around the streets; I didn't see it; I heard it was in the papers."

The *Adula* sailed from Kingston about half past five o'clock on the afternoon of the 28th.

Her log-book was put in evidence and the pages containing entries made for the 28th and 29th are reproduced in this record (pp. 198, 199). But it is impossible to ascertain the courses steered and the progress made by the vessel because the various entries are utterly inconsistent and tend to show that she was in different places at the same time. Besides, they are at variance with the testimony of Yeates, the master, and members of the crew.

A chart, contained in the record sent up by the prize court (Exhibit B, referred to on page 156) represents the island of Jamaica, with parts of Cuba and Hayti, and the adjoining seas. It is one of those published by the Hydrographic Office of the Navy Department. Lieut. Anderson, U. S. Navy, has located upon it the various courses and positions of the *Adula* as represented by her log entries (pp. 198–199, 156). The plat at the beginning of this brief was prepared by the Hydrographic Office. It reproduces from the chart the outline of the eastern portion of Jamaica, the western portion of Hayti, the southeastern coast of Cuba, the positions of the ports of Kingston, Santiago, and Guantanamo, and the courses and positions of the *Adula*. The scale of nautical miles, appended by the Hydrographic Office, is accurate, and may be verified by comparison with a degree of longitude.

The entry in the log for June 28, under the heading "Remarks," gives the bearing of Morant Point, the eastern point of Jamaica, at 11.15 p. m. as north-northwest by north, and the distance then traveled by the vessel, shown by her patent log, as forty-one knots. These two factors locate her about the point *A*. The entries represent that at 11.15 p. m. she changed her course to north-northeast, represented by the line *A B*, which course was held until 7.30 a. m. on the 29th. In the interval of eight and a quarter hours, at the rate of eight knots an hour, which is the rate represented by her log (see heading K), the *Adula* would have covered sixty-six miles and reached a point on the line *A B* a little to the southward of the point *B*. It does not seem possible that this course could have been taken: (1) because it would have carried the vessel over the Cleft Rocks of danger off Formigas Bank, where the water, as indicated on the plat, is very shallow; (2) be-

cause, if continued, it would have carried her to the eastward of Guantanamo.

It is represented that at 7.30 a. m. on the 29th the course was changed to north-northeast, one-half east, represented by the line *BFC*, and that this course was held until one o'clock. The noon entry for the 29th represents the *Adula's* latitude by dead reckoning, computed by her master, and also ascertained by his noon observation, as 19° 36′ north, which, on the course *BFC*, would place the vessel at the point *C*. At the rate of eight knots an hour, during the interval of twelve and three-quarters hours intervening after she left the point *A*, she would have covered exactly 102 miles, and only reached the point *F*, over sixteen miles to the southward of her noon latitude as entered in the log. The entry of her longitude at noon, as computed by dead reckoning, is given as 75° 26′ west. This would place her at the point *D*, six miles to the westward of the point *C*. If at noon she had been at the point *C*, by holding her course north-northeast one-half east (represented by the line *BFC*) she would have been carried directly to the entrance of Guantanamo Bay. If she had been at *D*, the mouth of the bay would have borne about northeast by north. But she held her easterly course until 1 p. m., only when it was changed to north by west. No rate of speed is entered after that for noon, but at two o'clock, holding a course north by west, she would have been very close in to the Cuban coast, about seven miles to the southwest of Guantanamo Bay with Santiago distant about thirty-three miles, and bearing about west-northwest. Under the heading "Remarks" (p. 199) there is an entry to the effect that, at two o'clock, being about five miles off shore, she sighted several war vessels to the westward, off Santiago harbor, which bore about north-

west by west. With the entrance to Santiago harbor bearing northwest by west, a vessel on the course *A BFC* would have been about the point *C*, and a vessel in longitude 75° 26′ west, or thereabout, would have been a very short distance north of the point *D*. In either case she would have been over fifteen miles from the Cuban coast, and over 30 miles from Santiago.

The same entry continues that, at 2 p. m., upon sighting the blockading fleet, the *Adula* steered coastwise for Guantanamo, and the entry at the bottom of the page states that she arrived off the entrance of the bay at 4 p. m. This is incredible because she would not have occupied two hours in running seven miles, and she would not have run coastwise. If, however, she had been at the point *C* or *D*, her distance from the entrance of Guantanamo Bay would have been upwards of eighteen miles, and at her indicated speed of eight knots, she could barely have reached it at 4 p. m., if she had followed a direct course.

Yeates, the master, testified (p. 100, 35th) that all the papers found on board the *Adula* were true and correct, and that he knew of no matter or circumstance to affect their accuracy or credit. It seems, however, that the log entries standing alone are inconsistent and misleading. Yeates said (p. 96, 12th):

> " . . . On this last voyage we passed near Port Royal, Jamaica, and then we came within seven or eight or ten miles of Santiago. The reason for our going by Santiago was on account of my not being acquainted with the coastline to the eastward of Santiago, and I had no large scale chart, and therefore I steered more to the westward than I should have done, and I went more to the westward to make out the land, because I knew the coast about Santiago and I did not know the coast about Guantanamo Bay."

The noon entry for June 29th (p. 199) under the heading "Bearing and Distance," is this: "Nine a. m. Sighted high land, Cuba." Entries for the same hour under the heading, "Remarks," show that the weather was cloudy with occasional rain, and the noon entry shows that the sun was obscured. If at 7.30 a. m. the *Adula* was about the point *B*, at 9 o'clock, having steamed at the rate of eight knots an hour, she would have been only twelve miles to the northward and more than thirty-five miles from the Cuban coast. To sight it in cloudy weather, at such a distance, would be impossible.

Again: the course indicated by the log entries is practically a direct one from off the eastern point of Jamaica to Guantanamo Bay. Nowhere upon it would the *Adula* have come within "seven, eight, or ten," or even thirty miles of Santiago. Yeates testified further (p. 100, 36th):

> " . . . On leaving Kingston we did not steer direct for the port of Guantanamo, as I said before, on account of not being acquainted with the land. I steered to the westward of the port we were bound to. I was not steering in a direct course, as you can see by the log-book, on account of not being acquainted with the coast to the east of Santiago; so I steered to the westward. We just ran down the coast. We were sailing a little wide of the port where the ship was destined. I do not remember the course exactly that I laid for Guantanamo. I may have been a point and a half or two points off my course to the westward, with the object of picking up this land that I was acquainted with and then running down the coast to Guantanamo Bay. I could not take any observations on that day, because it was cloudy and I wanted to get to a point that I knew about. When I sighted land, we were between Guantanamo Bay and Santiago. I do not know how far we were from Santiago. I believe we went to

within about ten miles of Santiago. I recognized the highlands around Santiago. I won't say it was ten miles; it might have been ten miles. Our course was not altered to any other port except Guantanamo. That was the point we were steering for. I do not know what time the ship's course was altered for Guantanamo. That information is down in the log-book. We first made for the land that I knew, and then, when we made out the land, we altered the course and went down to Santiago. Previously to steering for Guantanamo, I was steering to the westward and I saw several ships there and I imagined I would be stopped by some of them, and I slowed down the engines and I steered about a quarter of a mile in the direction towards Santiago. However, as I was not stopped, I turned around and steered direct for Guantanamo, but I was in proximity to Santiago. My reason for changing my course was seeing vessels at Santiago and I expected to be stopped and I changed my course from west to eastward and then I changed around to the westward. The first time I changed around to the eastward to come to these vessels, and when I found there was no vessels approaching us, I then turned right around and turned to the eastward and hauled for the eastward for Guantanamo Bay."

The blockading fleet off Santiago was composed of vessels without heavy top hamper, in fact they had only short pole masts and they were painted a dull gray which made them very hard to discover. The *Adula* could not have sighted them at a greater distance than ten miles. The entry in her log, which represents that she sighted them for the first time at 2 p. m., cannot be correct. The distance between Santiago and Guantanamo is about forty miles. Now, granting that at the time of sighting the blockading fleet, the *Adula* was ten miles from them, and they were five miles to the eastward of Santiago, she would have

been twenty-five miles from Guantanamo Bay where she arrived at 4 p. m. She could not have covered the twenty-five miles in the interval of two hours. To do so she would have been obliged to maintain a speed of twelve and one half knots an hour, whereas she could make but little over eight. No attempt was made to get permission to pass the blockade from the fleet off Santiago or to find the pilot for whom Solis had cabled. As the *Adula* approached Guantanamo Bay she could not see the U. S. S. *Marblehead* and other vessels blockading the port because they lay within the bay, behind headlands. She was within a half a mile of the entrance to the harbor when they were discovered, and she was so close upon them that escape would have been impossible (pp. 175, 185). Just as the Bay opened to view she was stopped by the U. S. S. *Vixen*, then passing out to sea. Horatio Morris, one of the captured crew, testified (p. 119) that the *Vixen* asked whether the *Adula* had not seen the blockading fleet off Santiago and whether she did not know that Guantanamo was blockaded and that Yeates, the master, replied "Yes" to both questions. The *Vixen* then told her to proceed into the bay. She did so, and came to anchor where she was seized by the U. S. S. *Marblehead* (pp. 88, 92, 98–99).

After the capture, Yeates wrote a letter to his parents, in which he said: "And now to tell you, dear ones, how it is, or was, that we got into this pickle, which has not come as any surprise, as I have anticipated it for some time" (p. 234).

On July 10th she was sent to Savannah in charge of a prize crew, arriving there on the 16th. She and her cargo were duly libeled on the 21st (pp. 1–4). On the 26th the Atlas Steamship Company filed a formal claim to the vessel (p. 6). It also presented a petition for her relief

on stipulation for her value (pp. 8–13). This contained allegation purporting to state her ownership; her record between the outbreak of the war and the time of her capture; the state of the blockade of the southern coast of Cuba in general and of the ports of Guantanamo, Santiago, and Manzanillo in particular; the terms of the charter-party, under which she sailed, and the objects of the voyage.

On July 27th the prize commissioners filed their report (pp. 19–21). With it they transmitted the ship's papers and the depositions taken *in preparatorio*, which were those of Yeates, the master, Solis, the charterer and supercargo, James Clarkson, acting chief officer, David Hamilton, quartermaster, John Darling, quartermaster, James C. Williamson, purser, and Horatio Morris, sailor. They also filed two affidavits made by Lieut. Anderson, the prize master: one containing a list of the papers found on board the *Adula*, the other identifying the newspapers found upon her; also claims for prize money which had been filed with the prize commission on behalf of the officers and men of the naval vessels at Guantanamo; and three depositions, taken *de bene esse*, of the prize master, and two members of his crew. These depositions had been taken in the presence of counsel for the United States and the claimants pursuant to a written stipulation (p. 175).

On July 27, counsel for both parties entered into a stipulation by which it was agreed that the hearing of the cause, upon the evidence taken *in preparatorio* and on the papers and documents sent up by the prize commissioners and the claimant's petition, should proceed on that day, and that the claimant's answer should be filed on the following day. This was approved by the court and the hearing was had forthwith (p. 13).

On the 28th, the court entered a decree of condemnation whereby the vessel was pronounced a good and lawful prize for the breach of the blockade and also as enemy property (p. 24).

On the 27th the claimant filed its answer (pp. 14–19). It was verified by an agent of the company who resided in Georgia, and who had no personal knowledge of the facts. It denied that the *Adula* during her last voyage and at the time of her capture, was in any way subject to the direction or control of Solis. It denied that the blockades of Cienfuegos, Manzanillo, Santiago, and Guantanamo were actual and effective, or that the blockade of the three ports last named was properly proclaimed or was a matter known throughout the civilized world or well known in Kingston. It denied that the official notification of the blockade was given out in Kingston by the British government on June 28, or prior to July 6. It denied that, prior to the sailing of the *Adula* from Kingston on June 28, the United States consul refused to give her a passport because her prospective ports of call were blockaded. It asserted that the *Adula* never intended to enter any port, invested by the United States naval forces, without obtaining permission to do so, and that she would have desisted from her attempt to enter Guantanamo Bay had she been met by a United States vessel and ordered not to go there; and that the object of her voyage was purely humanitarian and could not be considered a violation of the blockade.

On the 28th, the claimant moved the court to order further proof respecting various matters alleged in the libel (p. 19). In support of this motion, the claimant filed two affidavits; one was made by Robert Gemmel, the agent of the company in New York (pp. 25–35). All averments of fact contained in it were made upon infor-

mation and belief. The other affidavit was made by W. P. Forwood, the agent of the company at Kingston (pp. 35–40). The former repeated allegations of fact contained in the claimant's petition and answer, and described the further proofs which the claimant wished to take. Appended to it was a paper described as a copy of extracts from a letter written by Forwood to the affiant. In his affidavit Forwood did not repeat the statements made in his letter to Gemmel; but simply described the charters of the *Adula* during May and June of 1898.

On behalf of the United States an answer to the claimant's motion was filed (pp. 40–48). It reviewed in detail the evidence taken *in preparatorio*, comparing it with the allegations contained in the claimant's affidavits and answer. In further opposition to the motion and in lieu of counter affidavits, the attorney for the United States offered the deposition of Lieut. Anderson, and Ellenburg and Gill, of the prize crew, taken *de bene esse*, as heretofore noted.

These were offered for the purpose of furnishing additional proof of the establishment of an effective blockade of Guantanamo Bay on June 8th; that an actual and continuous blockade of Cienfuegos, Santiago and Guantanamo was maintained until after June 29th; and that Lieut. Anderson delivered to the master of the *Adula* on May 9th a copy of the President's proclamation of April 22, 1898, declaring the blockade of Cienfuegos and other ports; also to show that the *Adula* was within the three-mile limit and was proceeding directly into Guantanamo Bay when seized (pp. 40–49).

The motion was heard on the pleadings and proofs already of record, the affidavits presented by the claimant, the answer of the United States and the testimony taken *de bene esse*. It was overruled (pp. 49 and 50). An appeal to this court was thereupon taken and perfected.

Subsequently, on the application of the Atlas Company, the vessel was released upon a stipulation for value, which had been duly fixed at $50,000 (pp. 247–248).

On this appeal the claimant presents thirty-seven assignments of error. By these it is asserted that the Prize Court erred: (1) In permitting the introduction in evidence of the deposition of members of the prize crew taken *de bene esse*, and of a personal letter, written by the master of the *Adula* after her capture, which was transmitted to the Court with the report of the Prize Commissioners (I, XIV, XV, pp. 238, 239). (2) In holding that, for the purpose of the voyage, the *Adula* was a Spanish ship and that the burden of proving her neutral character at the time of her capture rested on the claimant (II, III, IV, V, IX, XVIII, XIX, XX, XXI, XXVIII, XXX, and XXXIV, pp. 239–241). (3) In holding that the blockades in question were lawful, actual and effective (VI, VII, VIII, and X, p. 239). (4) In holding that the *Adula* was guilty of a breach of the blockade of Guantanamo Bay on June 29th, and that she had previously run other blockades, and purposed to do so in the course of the voyage on which she was engaged when captured (XI, XII, XIII, XVI, XVII, XXII, XXVII, XXIX, XXXI, XXXII, XXXIII, and XXXV, pp. 239–241), and (5) In refusing to allow the claimant to take further proofs (XXIII, XXIV, XXV, and XXVI, p. 240).

We shall discuss the questions raised in their order.

FIRST.

*The depositions of members of the prize crew taken de bene esse were not admitted in evidence. Their acceptance in lieu of counter affidavits, upon the hearing of the claimant's motion for leave to take further proof, was proper. The admission of a letter directed by the master of the "Adula" to his parents, after the capture of the vessel, was proper.*

The claimant is wrong in saying that the depositions of Anderson, Ellenburg, and Gill were admitted in evidence. The Prize Court's statement with regard to this should be sufficient. It said (p. 58):

> "The hearing upon the proceedings for condemnation was upon the evidence afforded by the examinations of the captured crew taken upon standing interrogatories, the ship's papers and other evidence of a documentary character found upon the ship by the captors. This was done in conformity to the established rules in prize causes. 'These [the ship's] papers and examinations *in preparatorio* constitute the only evidence on which the cause is first heard. If, on this evidence, there be doubt, or justice require it, the Court may in its discretion order further proof.'"

The assertion is further disproved by the decree of condemnation, in which it is stated (p. 24):

> "The above stated cause came on to be heard before the Court upon the pleadings and upon the documents, papers, &c., and testimony taken, *in preparatorio*, before the Prize Commissioners and sent up to the Court in conformity with the law and practice in such case . . . "

Furthermore, these depositions might properly have been offered and admitted in evidence along with other proofs sent up by the Prize Commissioners. Prior to the hearing of the cause, this stipulation was made by counsel for both parties and approved in open court (p. 13):

> "It is agreed between the parties, by their respective proctors of record, that the hearing on the evidence taken in preparation, *and on the papers, documents, &c., sent up by the Prize Commissioners* in the above-stated cause and on claimant's petition, proceed to-day before the Court."

The depositions had been taken after notice to the master of the *Adula* and the claimant's counsel, and pursuant to a stipulation in writing signed by both, in which it provided (p. 175):

> "Service of a copy of the above notice acknowledged, and it is agreed that said depositions may be taken orally on examination, cross-examination, and re-examination by counsel of the respective parties before the said Prize Commissioners, and that the testimony may be taken down stenographically and reported in typewriter by a stenographer to be appointed by the Prize Commissioners, *and when signed by the respective deponents shall be reported by the Prize Commissioners in usual form.*"

That they were transmitted by the Prize Commissioners along with other proofs is shown by the specific mention made of them in the Commissioners' report (p. 20).

The fact is that these depositions were not offered by the United States and were not considered by the Court until the hearing of the claimant's motion for leave to take further proof. It is worthy of note that they had no influence upon the Court's disposition of the motion. In speaking of them, the Court said (p. 62):

> "This testimony was not before the Court on the hearing of the evidence taken *in preparatorio*, nor is it essential to the determination of this question now, although formally submitted by the United States attorney as cause why the case should not be re-opened."

The claimant in support of its motion for leave to take further proofs filed two affidavits and an answer to the libel. One of the affidavits and the answer were verified by two of the claimant's agents, residing in different parts of this country, who had no personal knowledge of the facts. The depositions taken *de bene esse* certainly were of more value as proofs and were competent as a showing counter to that made by the claimant.

The letter, written by Yeates the master to his parents on July 13th, was seized before the vessel reached Savannah. The writer was an agent of the owners, whose admissions concerning the *Adula's* conduct during the war and the circumstances attending her last voyage were binding upon his principals. It was duly produced before the Prize Commissioners and transmitted to the Court. It was clearly an admissible document.

SECOND.

*The "Adula" at the time of her capture was under the control of a loyal Spanish subject, and was, for all purposes of the voyage on which she was bound, a Spanish vessel. If, under these circumstances, she could have established a neutral character, the burden of doing so rested upon her.*

Solis, the charterer of the vessel, who, by advice of the claimant's agents, was enrolled on the ship's books in the

humble capacity of "supercargo," admitted that he had remained a loyal subject of Spain throughout the Cuban war (p. 104). It is but reasonable to assume that during the latter part of June, when Santiago and other places of military importance, on the southern coast of Cuba, were closely invested by the United States forces, Spanish officials would have been careful not to allow any, but men of whose loyalty they were sure, to enter their beleaguered cities and thus have an opportunity to carry information to Cuban sympathizers, or to bring reports to agents of the United States. It is proven that the Spanish consul at Kingston had refused to issue passports for Santiago and other ports (p. 114). The cause of Spain had nothing to gain by allowing a vessel without a cargo to enter Cuban ports and depart with Cuban refugees unless she brought or carried out information. It is claimed that the getting of refugees was the sole object of the *Adula's* voyage. Yet Solis appeared to have the ear of the Spanish consul and his implicit confidence. He had a personal passport authorizing him to travel where he pleased. He had no difficulty in obtaining a passport which authorized him to take the *Adula* into any Spanish port. In spite of the risks of war which caused others to desist from trade with Cuba, Solis appears to have been successful in continuing an extensive business. His private correspondence captured with the *Adula* proves it. He persistently refused to heed the warning of the United States consul, who told him that he could not enter Guantanamo, Santiago, or Manzanillo. In his evidence he displayed great cleverness in dwelling upon the humanitarian side of his ventures, claiming that it was his primary object to alleviate the horrors of war, but he admitted that his humanitarian zeal had been rewarded by considerable profits and that he expected to make $19,000 out of the *Adula's* voyage.

So much for Solis. Now take the status of the *Adulu*. Although she had always sailed under the British flag and her ownership and registry were British, her record during the war contained incidents not consistent with neutrality. Twice, earlier in the war, her owners had appreciated the necessity of obtaining from Washington, permits to pass the blockade of Cienfuegos. On both of these occasions they had pleaded the humanitarian object of her voyage as a reason for special indulgence. On both voyages they fulfilled their promise to carry no cargo. On the second voyage, the vessel came out of Cienfuegos without encountering a blockade vessel. Encouraged by this, her owners decided to send her again, this time without a passport and with a cargo of supplies. She succeeded in running the blockade, but on her return trip was stopped by a blockading vessel. She might well have then been made a prize of war because she had received abundant notice of the blockade on both of her prior voyages, but she was allowed to proceed after a very positive warning. On her last voyage the vessel was under the control of Solis. Her master had been instructed privately to take her to any Cuban port designated by him, after calling at Guantanamo, Santiago, and Manzanillo. He was also instructed to receive on board any persons whom Solis might produce. He was not authorized to inquire whether any of them were Spanish agents, and was given no discretion in the way of refusing to receive persons whom he might regard with suspicion. Before she sailed for Guantanamo on June 28th, Forwood, the managing owner of the vessel, was notified by Dent, the United States consul, that Solis was under suspicion, and admitted that he had made some investigation concerning his character. Forwood was warned by Dent not to permit his ship to sail and that she would be liable to capture if she did. He

persisted in disregarding these things. It was a condition upon which the vessel was chartered that Solis should obtain clearances for all ports. Forwood and Yeates knew that he had obtained a Spanish passport, and that one had been refused by the United States consul (pp. 94, 96, 106). The Spanish passport was an enemy's license, and the fact that it was obtained for the use of the *Adula* in entering enemies' ports rendered her liable to seizure:

*The Aurora*, 8 *Cranch*, 203.
*The Julia*, 8 *Cranch*, 181.

The mere fact of sailing under such a license would have rendered the vessel liable to confiscation, without regard to the object of her voyage or the port of her destination.

*The Ariadne*, 2 *Wheat.* 143, 147–148.
*The Hiram*, 1 *Wheat.* 440, 447.

It is the right of a captured vessel to have the cause, in the first instance, determined upon her papers and the testimony of the captured crew whose interests are hers. But it is the duty of the captured crew to tell the whole truth. In the present case the proofs duly taken *in preparatorio* failed to establish the neutrality of the vessel, and her condemnation was inevitable. By the settled rule of prize courts the *onus probandi* of a neutral interest rests on the claimant.

3 *Wharton's International L. D., Sec.* 230.
*The Jennie*, 5 *Wall.* 183, 188.
*The Amiable Isabella*, 6 *Wheaton*, 1, 78.

THIRD.

*The Blockades of Guantanamo and Santiago were lawful, actual, and effective.*

The blockades of Santiago and Guantanamo were established during the early part of June, by order of Admiral Sampson, Commander-in-Chief of the United States Naval force then investing the ports on the southern coast of Cuba, and were maintained as actual and effective blockades until long after the *Adula's* capture.

Investments and blockades so ordered and so maintained have always been recognized as lawful. In the Treaty of Amity, Commerce and Navigation concluded between his Britannic Majesty and the United States, on October 19, 1794, it was provided (Article XVIII):

> ". . . And whereas it frequently happens that vessels sail for a port or place belonging to an enemy without knowing that the same is either besieged, blockaded, or invested, it is agreed that every vessel so circumstanced may be turned away from such port or place; but she shall not be detained, nor her cargo, if not contraband, be confiscated, unless, after notice, she shall again attempt to enter, but she shall be permitted to go to any other port or place she may think proper. . . ."

Here is an express recognition by Great Britain of what are termed simple blockades. Throughout the war of the Rebellion, Great Britain was consistent in maintaining that the true test of the validity of a blockade is its actual existence and its efficiency. They are to be distinguished from blockades proclaimed by governmental notice in these respects alone. In due course, after the proclamation of a governmental proclamation, neutral

vessels are presumed to have notice of the blockade and its continued maintenance. In the case of a simple blockade, the captors must prove that the blockade was actual at the time of seizure, and they must prove that the captured vessel had come after notice, or its equivalent—actual knowledge.

In the case of the *Circassian*, 2 *Wall.* 135, 150, it was said:

> "A simple blockade may be established by a naval officer, acting upon his own discretion, or under direction of superiors, without governmental notification, while a public blockade is not only established, in fact, but is notified by the government directing it to other governments. In the case of a simple blockade, the captors are bound to prove its existence at the time of capture, while in the case of a public blockade the claimants are held to proof of discontinuance in order to protect themselves from the penalties of attempted violation."

In *Duer on Insurance* (*p.* 60, *Sec.* 44) the rule with regard to simple blockades is stated thus:

> "It seems a just inference from the decisions that where a blockade was constituted simply by the fact of an investment, although its existence was known at the port of departure previous to the sailing of the neutral ship, she may clear out provisionally for the blockaded port, but that in this case, as in former cases, the inquiry upon the result of which the right to complete the voyage must depend, must be made at a port of the blockading state or of a neutral power. I see no reason to doubt that the prohibition to proceed to the mouth of a blockaded port embraces all cases of previous knowledge from whatever sources the knowledge may have been derived, and that in all its violations is subject to the same penalty."

The *Adula* and her owners had adequate notice of the blockade. It is proven that the existence of the investment of Guantanamo Bay and its actual blockade was known in Kingston before the *Adula* sailed and was known to her managing owner, master, charterer and members of her crew, and that, in spite of repeated warnings, she sailed to Guantanamo, without any attempt whatsoever to gain further knowledge of the conditions existing there.

By its answer the claimant contends that in Kingston it was supposed that the port of Guantanamo was completely within the possession and control of the United States and therefore that the blockade had been terminated. We have seen that the town of Guantanamo, a short distance inland, near the head of the bay, was held by a Spanish force, as were several other positions in the neighborhood. The military campaign in the vicinity was in active progress and encounters between the United States and Spanish troops were of frequent occurrence. The United States held positions on the western side of the bay, which had been occupied as a base for the military campaign and as a coaling and supply station for the fleet, but it did not hold possession of the port and the necessity for the blockade continued.

In the case of the *Circassian* (*supra*), it appeared that a British merchant steamer was captured on the 4th of May, 1862, for attempting to violate the blockade of New Orleans. During the last days of April the city of New Orleans and the forts commanding its approaches from the Gulf of Mexico had been captured by the Federal forces, and on the 1st of May they took military possession of the city. The court said (p. 151):

> "The object of blockade is to destroy the commerce of the enemy and cripple its resources by ar-

resting the import of supplies or the export of products. It may be made effectual by batteries ashore, as well as by ships afloat. In the case of an inland port, the most effective blockade would be maintained by batteries commanding the river or inlet by which it may be approached, supported by a naval force sufficient to warn off innocent and capture offending vessels attempting to enter. The capture of the forts, then, did not terminate the blockade in New Orleans, but, on the contrary, made it more complete and absolute. Was it terminated by the military occupation of the city?

"The blockade of the ports of the insurgent states was declared from the first by the American Government to be a blockade of the whole coast, and so it has been understood by all governments. The blockade of New Orleans was a part of this general blockade. It applied not to the city alone, but controlled the port, which includes the whole parish of New Orleans and lies on both sides of the Mississippi and all the ports on that river and on the lakes east of the city.

"Now it may be well enough conceded that a continuous and complete possession of the city and the port, and of the approaches from the gulf, would make a blockade unnecessary and would supersede it. But at the time of the capture of the *Circassian* there had been no such possession. Only the city was occupied, not the port; much less the district of country commercially dependent upon it, and blockaded by its blockade. Even the city had been occupied only three days. It was yet hostile. The rebel army was in the neighborhood; the occupation, limited and recent, was subject to all the vicissitudes of war. Such an occupation could not, at once, of itself, supersede or suspend the blockade."

The appellant suggests that this great authority was effectually reversed by an award of the International tribunal created pursuant to the treaty of Washington,

which awarded damages to the owners of the *Circassian*. The work of such a tribunal resembles more a business negotiation than an adjudication of rights. Its awards are based upon expediency and policy more than upon rules of law. Certainly they cannot reverse or control the decisions of this court. Hence these blockades were lawful, and were binding upon all neutral vessels which, like the *Adula*, had adequate notice of them.

The conduct of the claimant's agents discredits the position which it now attempts to take. If they had really supposed that the port and harbor of Guantanamo were in the control of the United States and that the blockade had been terminated, why was Forwood so particular in his warning to the master of the *Adula*, that he would meet United States vessels off that port and would doubtless be stopped? Why did he require Solis, a Spaniard, to obtain clearances for all ports? Why was he satisfied with the passport obtained for the *Adula* from the Spanish consul at Kingston? Why did he have the vessel's bill of health for Guantanamo viséd by the Spanish consul? Why did he disregard the United States consul's advice? These will be hard questions for the claimant to answer.

Williamson, the ship's purser, testified (p. 90):

> "Guantanamo is in Cuba. When we left Kingston we understood it was Spanish territory."

The claimant contends that the joint resolution of the Senate and House of Representatives, approved on April 20, 1890, 30 Stat. L. 739, whereby it was declared: "That the people of Cuba are, and of right ought to be, free and independent," precluded the United States, thereafter, from treating any part of Cuba as hostile territory, or maintaining a blockade of any port, therein. This is absurd. The

freedom of the "*people*" was recognized, not that of the territory, nor was the national existence of Cuba, recognized. In our civil war the blockades of southern ports were not terminated by the Emancipation Proclamation. Spain's hold upon the Island of Cuba was strong. Spanish forces were strongly fortified in many of its ports. The Cuban insurgents had made little or no impression upon them. It cost the lives of many of our people and millions of dollars to compel Spain to relinquish its sovereignty. At the close of the war, Spain still held Havana and many other places. The blockade proved our most effective means of prosecuting the war to a speedy termination and prevented many battles and sieges. It cut off from sources of supply, territory which was under the absolute military control and government of Spain. Such blockades have always been held lawful, and will be so long as war continues to be the final arbiter of national differences.

Some comment may be made upon the fact that the President's proclamation of June 27th did not declare the blockade of Guantanamo and Santiago, but the reason for their omission is apparent. No extensive military or naval operations were in progress about other ports on the southern coast of Cuba, and a Governmental notification of the blockade was necessary for the protection of neutral commerce, but in the case of Santiago and Guantanamo, the universal, actual, knowledge of the conditions, existing, dispensed with the necessity of notice, which would have been an empty form.

*International Law (Hall), pp.* 718–724.

FOURTH.

*The "Adula" was guilty of a breach of the blockade of Guantanamo.*

The vessel can fairly be pronounced a blockade runner. She had already, deliberately run the blockade of Cienfuegos. Her master appreciated this fact and had anticipated the capture (p. 234).

From the admissions made by her owner and master and members of the captured crew, and the other proofs which we have already reviewed, but one conclusion can be drawn: The owners of the vessel yielded to the temptation offered by large charter money and permitted her to engage in what they knew to be a dangerous trade. In spite of their denials it is clear that they allowed her to sail for Guantanamo, with actual knowledge of its investment and blockade. This rendered her liable to capture and condemnation.

In the case of the *Circassian*, 2 Wall. 135, it was said by Mr. Chief Justice Chase:

> "It is a well established principle of prize law, as administered by the courts both of the United States and Great Britain, that sailing from a neutral port with intent to enter a blockaded port and with knowledge of the existence of the blockade, subjects the vessel, and in most cases its cargo, to capture and condemnation. . . . We are entirely satisfied with this rule. It was established with some hesitation when sailing vessels were the only vehicles of ocean commerce, but now, when steam and electricity have made all nations neighbors, and blockade running from neutral ports seems to have been organized as a business and almost raised to a profession, it is clearly seen to be indispensable to the efficient exer-

cise of belligerent rights. It is not likely to be abandoned until the nations by treaty shall consent to abolish capture of private property on the seas, and with it the whole law and practice of commercial blockade."

*Yeaton* v. *Fry*, 5 *Cranch* 335.
*The Frederick Molke*, 1 C. Rob. 72.
*The Columbia*, 1 C. Rob. 154.
*The Neptunus*, 2 C. Rob. 94.
1 Kent Com. 150.

In *Duer on Insurance* (*p.* 661) it is stated:

"Proof of the actual knowledge of the party at the inception of the voyage supersedes in all cases the necessity of warning, nor is it of any importance by what means or in what form he received the information; if the communication made to him is credible in its nature, he is not permitted to aver that he placed no confidence in the communication, but had just claims to his belief. . . . And even in the absence of actual notice, since the proof was sufficient to show the notoriety of the fact a blockade existed at the port to which the voyage was commenced, it raises a presumption by which the party charged with the offense may be concluded."

In the case of the *Admiral*, 3 *Wall.* 603, it was said:

"Settled rule as established by a majority of this court is that a vessel which has a full knowledge of the existence of a blockade is liable to capture if she attempts to enter the blockaded port in violation of the blockade regulations, and that it is no defense against an arrest made under such circumstances that the vessel arrested had not been previously warned of the blockade, nor that such previous warning had not been endorsed in her register."

*The Biagorry*, 2 *Wall.* 135.
*The Herald*, 3 *Wall.* 768.

The claimant pleaded as a justification, and Solis, the charterer, dramatically asserted, that the humanitarian objects of the voyage purged it of any suspicion of wrong. Such an attempt by a shipper to prescribe an exception to the rules of blockade is an absurdity.

Again; if the owners of the vessel honestly believed that they had a right to pass the blockades in search of refugees, why did they go to the trouble of obtaining a passport for the *Adula* when she went to Cienfuegos upon similar missions on the 9th and 20th of May? What justification had they for persisting in such an opinion when advised by the United States consul that it was erroneous? We submit that this excuse is not even plausible. The purpose of a blockade is not alone to damage the commerce of an enemy, but to prevent the enemy from obtaining supplies, and from receiving or transmitting information. On the proposed voyage, the *Adula* was to call at Guantanamo, then at Santiago, then at Manzanillo, and afterward at such ports as the charterer might designate to the master. It was her intention to take on at each port such passengers as the charterer might produce. The character of these passengers would have been unknown. Coming from Spanish ports they might well have been Spanish officials and Spanish spies, travelling in the guise of Cuban refugees. They could have communicated to Admiral Cervera the strength of the blockading fleet, and could have carried from the invested territory information which, promptly imparted to Spain and Havana, would have proved valuable to the enemy. If such voyages were permitted, the purposes of blockade would be defeated and it would become little more than a farce.

*The Tulip*, 3 *Wash. C. C.* 181.

The claimant also pleads that the vessel never had any intention of violating the blockade; that the master had been specially warned to take no risk, but to stop at once, if ordered to do so by a blockading vessel, and, if stopped, to endeavor to obtain permission to pass the blockade from the commanding officer, but in no event to persist in entering any port if ordered away. When captured the *Adula* was proceeding directly into a blockaded port and had made no attempt to get permission from the naval authorities. But she had no right to call and ask for such permission and thus test the efficiency of the blockade.

In the *Admiral*, 3 *Wall.* 603, *supra*, it appeared that during the War of the Rebellion, a British vessel with her cargo was captured by a naval vessel of the United States, while standing in to the port of Savannah, then blockaded. She had been chartered in Liverpool by a firm of British subjects, to proceed with a cargo off the port of Savannah, and if, when she arrived, it was found that the blockade had been raised, then to proceed into the port and deliver her cargo, but if the blockade were still in force to proceed to St. Johns, New Brunswick. It was stipulated that double freight should be paid if the cargo were landed at Savannah. The owner enclosed a copy of the charter-party to the master, with a letter of instructions. By these, the master was directed to run no risk of capture, but to call off Savannah, and if he should find the blockade still in force, to have the officer, in command of the blockading ship, make an endorsement in the ship's log, to the effect that she had been warned off. It was held:

> "Arrested as the ship was, when near the blockaded port and when heading for the land, and when, in point of fact, she was in the act of entering the port, the master then, instead of presenting the clearance

for the port which he had passed, set up the pretense that his purpose was to inquire whether the blockade had been raised, and claimed that he must be first notified of a fact, which he knew when the ship sailed, before the capture could lawfully be made. Such a defense is without merit and finds no support in any decided case or in any acknowledged principle applicable to prize adjudications."

In the *Cheshire*, 3 Wall. 231, it was said:

"The intention to break the blockade is to be presumed from the position of the ship when captured. As already stated, she knew of the blockade when she sailed from Liverpool. She had no just reason to suppose it had been discontinued. Her approach, under these circumstances, to the mouth of the blockaded port for inquiry was itself a breach of the blockade and subjected both vessel and cargo to seizure and condemnation . . . (p. 236). If approach for inquiry were permissible, it will be readily seen that the greatest facilities would be afforded to elude the blockade. The liberty of inquiry would be a license to attempt to enter the blockaded port, and that information was sought would be the plea in every case of seizure. With a liberty of this kind the difficulty of enforcing an efficient blockade would be greatly augmented. If information be honestly desired, it must be sought in other quarters. In the case of the *James Cook*, Edw. Adm. 263, the ship was captured at the entrance of the Texel, and the court applied this rule, observing that the approach of the ship to the mouth of the blockaded port, even to make inquiry, was in itself a consummation of the offense, and amounted to an actual breach of the blockade."

We have reviewed with some care the character of the entries made in the *Adula's* log during her voyage from Kingston, and have demonstrated their self-evident

falsity. The errors are so gross that they cannot be passed over as trivial exhibitions of carelessness. No hypothesis consistent with one of the many which might be evolved from the log can be made to agree with the master's description of the *Adula's* course. When coupled with the master's admission that the capture was not unexpected, the false record develops into a very suspicious circumstance. The master's testimony concerning the ship's course is supported by that of the first officer (pp. 127–128) and members of the crew (pp. 92, 121, 131); on the whole it seems more credible than the log. The truth with regard to the voyage is doubtless this: After leaving Kingston the *Adula* rounded Morant Point, then proceeded at her best speed toward Santiago and sighted the fleet on blockade off that port before noon on the 29th. Throughout her voyage she was many miles to the westward of any position shown by her log. She became convinced that the blockade was effective and, without attempting to get permission to pass, hurried coastwise toward Guantanamo. Running along close to the shore she was unable to see the U. S. S. *Marblehead* and *Vixen* lying within Guantanamo Bay until she reached the entrance. This gave her no opportunity to inspect the blockade, and she was caught in the act of attempting to violate it.

The blockade declared by the proclamation of June 27th included the port of Manzanillo. An actual and effective blockade was established immediately. This fact was known in Kingston and the *Adula* had notice of it. She intended to proceed to Manzanillo after calling at Santiago and Guantanamo. This rendered her liable for an intended violation of the blockade of Manzanillo.

*The Peterhoff*, 5 Wall. 28, 54:

"It is an undoubted and general principle recognized in this court in the case of the *Bermuda* and several other cases that an ulterior destination to a blockaded port will infect a primary voyage to a neutral port with liability for intended violation of the blockade."

*The Bermuda*, 3 Wall. 551.

FIFTH.

*The prize court would not have been justified in ordering further proofs to be taken as prayed by the claimant's motion.*

The proofs, *in preparatorio*, were taken in accordance with the long-established rule of prize courts. The ship's papers were all in evidence. Only the master and members of the captured crew were examined, and their examinations were upon standing interrogatories. On these proofs the cause was heard.

*In the Pizarro*, 2 *Wheat.* 227, it was said by Mr. Justice Story:

"It is upon the ship's papers and the examinations thus taken *in preparatorio* that the cause ought in the first instance to be heard in the District Court, and upon such hearing it is to judge whether the cause be of such doubt as to require further proof, and, if so, whether the claimant has entitled himself to the benefit of introducing it. If the court should deny such order when it ought to be granted, or allow it when it ought to be denied, and the objection be taken by the party and appear upon the record, the appellate court can administer the proper relief."

*The Amiable Isabella*, 6 *Wheat.* 1, '77:

"It is to be recollected that by the settled rule of

prize courts, the *onus probandi* of a neutral interest rests upon the claimant. This rule is tempered by another, whose liberality will not be denied—that the evidence to acquit or condemn shall, in the first instance, come from the ship's papers, and persons on board; and where these are not satisfactory, if the claimant has not violated good faith, he shall be admitted to maintain his claim by further proof. But if, in the event, after full time and opportunity to adduce proofs, the claim is still left in uncertainty, and the neutrality of the property is not established beyond reasonable doubt, it is the invariable rule of prize courts to reject the claim and to decree condemnation of the property."

*The Grey Jacket*, 5 *Wall.* 342, 368:

"The order [for further proof] is always made with extreme caution and only where the interest of justice clearly requires it."

In *Story's "Principles and Practice in Prize Courts,"* *pages* 9, 18, *and* 24, it is said:

"There can be no honest reason why the whole truth should not be told by the captured persons on the first examination. . . . Where the case requires the admission of new evidence that may always be obtained, but further proof is in no case a matter of right and rests in the sound discretion of the court. . . . It is never ordered unless cause appears upon the original papers and the answers to standing interrogatories."

*Benedict's Admiralty*, § 612:

"These (ship's) papers and examinations *in preparatorio*, constitute the only evidence on which the cause is first heard. If on this evidence there be doubt, or justice require it, the court may in its discretion order further proof."

Apply this rule to the present case. Facts which prove her previous violation of the blockade of Cienfuegos, were established by entries in her log, and the depositions of her master and members of her crew. Notice and due warning of the investment and blockade of Santiago and Guantanamo is proven by many papers found on the vessel, by the deposition of Solis, her charterer, Yeates, her master, and Morris, a member of her crew. The claimant's petition, answer, and test affidavits support this proof. That the vessel was within the control of a Spanish subject and sailing under a Spanish license is proven by the charter-party and the deposition of her master and charterer. Her log entries for the days occupied by her voyage to Guantanamo are grossly inconsistent, and indicate a deliberate intention to mislead any one who might examine them. She was caught in the act of entering the port of Guantanamo without a proper permit for that purpose. These facts, none of which could be disproved without discrediting the ship's papers and impeaching the claimant's witnesses, are sufficient to condemn the vessel. Proof of the alleged sentimental features of her proposed voyage and the alleged simple-hearted humanitarianism of Solis could not affect the case. The vessel had no right to persist in entering the blockaded port after she was told that she ought not to do so. There can be no justification for her owners in that they assumed to disregard well-recognized rules of blockade, and prescribed an exception to these rules which suited their convenience.

The further proof offered by the claimant was in substance:

(1.) To prove by Solis that he delivered the *Adula's* passport to Commander McCalla (p. 26). Solis testified *in preparatorio* that he delivered all of his papers to McCalla (p. 107). It would have been improper to permit him to be

re-examined on this subject. The claimant did not offer to call McCalla as a witness. Through an oversight, we assume, the claimant assigns as error the refusal of the court to order the taking of McCalla's deposition (p. 240, XIX). We do not set up a spoliation of papers as a ground for condemnation, but note the disappearance of the passport as a suspicious circumstance. The claimant suggested that a copy of the paper could have been obtained from the Spanish consul who signed the original. This could not have been done because the United States and Spain were at war when the case was heard. Beside, it was not necessary to know the exact contents of the paper. It was an enemy's license authorizing Solis to take the *Adula* to ports of the enemy, and as such was sufficient to condemn the vessel.

(2.) To prove by reports or officials of the Navy Department that the blockade of Cienfuegos had been abandoned, about June 15th, when the *Adula* proceeded thither, without a passport (pp. 26, 27). This could not be proven because it is not a fact. The *Adula* was boarded on her return voyage. Beside, the running of the blockade of Cienfuegos was not a ground of condemnation in this case.

(3.) To prove that the entries in the *Adula's* log were correct or nearly so (p. 27). The claimant did not name any witnesses who would do so. The log is in court and speaks for itself.

(4.) To prove by the master that the *Adula* expected to ask permission to pass the blockade from the United States fleet off Santiago and did not do so, because no vessel bore down upon and stopped her (p. 27). We have seen that this would not be material if it were a fact. On his first examination he dealt with it at length, and beside we have the log and the testimony of several members of the captured crew.

(5.) To prove that Forwood believed that the *Adula's* voyages between the ports of Guantanamo, Santiago, and Manzanillo would be made under the auspices of the United States Navy and with its consent (p. 27). What he may have believed is immaterial. He had positive notice from the United States Consul that the *Adula* would not be permitted to enter these ports. He regarded a Spanish passport as more important than one from the United States.

(6.) To prove that the *Adula* discharged her cargo at Kingston on June 28th because she had no right to carry supplies to Cuba and did not intend to do so (p. 28). If proved this would supplement the evidence which shows that the claimant had knowledge of the blockade before the *Adula* sailed for Guantanamo.

(7.) To prove that Horatio Morris made a mistake when he testified that he had learned of the blockade in Kingston three days before the *Adula* sailed (p. 28). That he did not understand the meaning of the term a blockade. To permit such proof would be a patent violation of the rule with regard to ordering further proof. And

(8.) To prove that Solis was a Cuban sympathizer, and only a Spanish subject because the freedom of Cuba was not an accomplished fact; that he was not a Spanish agent and that Forwood had learned this before the charter-party was signed. That Solis and Walker, formerly master of the vessel, carried letters on the *Adula* for delivery in Cuba as an act of courtesy (pp. 26–29). We have already reviewed the evidence bearing upon the character of Solis. His own testimony and his passports proved his allegiance to Spain. The letters found on the vessel are in evidence and speak for themselves.

It would have been error for the prize court to permit the taking of these proofs. They would have amounted

to nothing but vain repetitions of immaterial matter and attempted denials of facts already set out in the evidence.

We submit that the decree of condemnation should be affirmed.

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